

# Region 9 Air Division Standard Operating Procedures for Responding to FOIA Requests

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## Summary

**Background.** The attached SOP describes in detail the procedures Air Division will follow when FOIA requests are assigned to Air Division for response. It incorporates the Procedures for Responding to FOIA Requests the Agency issued on September 30, 2014 ([http://www.epa.gov/irmpoli8/policies/CIO\\_2157-P-01.1.pdf](http://www.epa.gov/irmpoli8/policies/CIO_2157-P-01.1.pdf)). Below is a short summary of Air's SOPs.

**Regional FOIA Distribution.** FOIA requests received by or assigned to the Region go through the **Region 9 FOIA Officer (IVRY JOHNSON)**, who manages [FOIAonline](#), a multi-agency electronic FOIA tracking system, and assigns the request to the Division that is most likely to house responsive records. The Region 9 FOIA Officer sends the request to the assigned Division's FOIA Coordinator with the deadline for responding to the request. Each division has its own internal assignment method; using that method, the Division FOIA Coordinator enters the staff and manager assignments into FOIAonline. If more than one Division has responsive records (a "Multi-Division FOIA"), the Region 9 FOIA Officer will assign the FOIA to the Division that is likely to have the majority of the responsive records as the "Action Office" and the other Division(s) as "Contributing Office(s)" in FOIAonline. The Action Office will be responsible for processing the request and preparing the response in coordination with the Contributing Office(s). The Contributing Office(s) must coordinate the Agency's response with the Action Office, including uploading responsive records into the system, before the FOIA response is finalized and transmitted to the requester. Divisions should contact the Region 9 FOIA Officer immediately if they have questions about the assignment of the "Action Office" and "Contributing Offices."

The Region 9 FOIA Officer coordinates Fee Waiver and Expedited Processing Requests with EPA Headquarters.

When a FOIA request is assigned to Air Division it is sent to **Air's FOIA Coordinator (CECILEY WILDER)**, who then coordinates with **Colleen McKaughan, Associate Director** regarding assignment to the appropriate Office. FOIA assignments within Air are determined by Colleen McKaughan and Ceciley Wilder based on the subject matter of the request. If a request has been erroneously assigned to Air or should be assigned to another division, the Air FOIA Coordinator will inform the Region 9 FOIA Officer immediately so that the request can be redirected to the appropriate Division for processing.

**FOIA Processing.** The assigned Air staff person is responsible for (1) coordinating with the Air Division FOIA Coordinator and the Associate Director on any Assurance of Payment request, (2) ensuring the statutory FOIA deadlines are met or an extension is obtained, (3) ensuring the appropriate supporting forms are prepared; and (4) ensuring the FOIA response is prepared for the Division Director's signature. **Note: There has been a significant change in the review and signature requirements for FOIA response letters. Every FOIA response, including full releases of records, must be signed by a Division Director. For Multi-Division FOIAs,**

**Division Directors for the Contributing Office(s) must complete an internal Records Release Authorization form which will be uploaded into FOIAonline but not for release to the public. In addition, all records released or being withheld (in whole or in part) must be reviewed by at least two knowledgeable individuals, including one manager/supervisor. When records are withheld, ORC must be included in the record review. Those that have reviewed the records must complete an internal Records Review form which will be uploaded into FOIAonline.** All of the template forms and letters can be found on the 9online FOIA intranet page at: <http://intranet.epa.gov/9online/sites/foia>

**\*Centralized Email Searches.** Searches for responsive email records are performed centrally. Searches for responsive records in Outlook are conducted by OEI's eDiscovery group and searches of Lotus Notes are conducted by Region 9's technical search lead. Procedures for requesting a centralized search will be set forth in guidance entitled "*Region 9 Centralized Searches Which Require a Search of Microsoft Outlook and Lotus Notes Emails*", and posted on the 9online FOIA intranet page.

**Uploading to FOIAonline.** Air Division staff are responsible for providing to the **Air FOIA Coordinator** four types of information to be uploaded into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline; (3) Records Review forms and, where applicable, a Records Release Authorization form; and (4) electronic versions of response letters and responsive records. Even where ORC is helping to conduct record review for releasability, the Air Division FOIA Coordinator remains responsible for ensuring that all responsive records and FOIA-related information is uploaded into FOIAonline.

**Regional FOIA Oversight.** Region 9's overdue FOIA responses are reported every Monday to the Region's Senior Management Team. Therefore, it is important that Air Division's managers and/or staff provide up-to-date information, including withdrawals, extensions, and responses, to the Air FOIA Coordinator for timely input into the FOIAonline system **no later than noon on Friday** of each week.

## **Air Division Procedures for Responding to FOIA Requests**

### **I. Overview**

FOIA requests received by or assigned to the Region go through the **Region 9 FOIA Officer (IVRY JOHNSON)**, who manages [FOIAonline](#) and assigns the request to the Division that is most likely to house the responsive records with a deadline for responding to the request. The Region 9 FOIA Officer then provides the request to the FOIA Coordinator for that Division.

If more than one Division has responsive records (a “Multi-Division FOIA”), the Region 9 FOIA Officer will designate the Division that is likely to have the majority of the responsive records as the “Action Office” and will assign the other Division(s) as “Contributing Office(s)” in FOIAonline. The Action Office is responsible for coordinating the response letter, ensuring all records are uploaded into the system, and communicating with the requester about extensions. The Contributing Office(s) must coordinate the Agency’s response with the Action Office, including uploading responsive records into the system before the FOIA response is finalized and transmitted to the requester.

When a FOIA is assigned to Air Division, the FOIA is transmitted to the Air FOIA Coordinator in FOIAonline, who will then coordinate with the Associate Director, then email it to the appropriate Office managers to determine the appropriate staff for assignment. FOIA assignments within Air are determined by the subject matter. Once the FOIA assignment is made, Office managers inform the **Air FOIA Coordinator** to enter the names of the **staff person** and **Air Office Chief** into FOIAonline.

If the FOIA request is Multi-Divisional, Air will either be designated the Action Office or a Contributing Office, and Air must coordinate with the other Division(s) accordingly. Where Air is the Action Office, Air is responsible for preparing and signing the response letter, ensuring all records and forms are uploaded into the system, and communicating with the requester about extensions. Where Air is a Contributing Office, the Staff person must ensure that all of Air’s responsive records and the Air Division’s internal Records Release Authorization form are given to the Air Division FOIA Coordinator to be uploaded into FOIAonline.

All FOIA requests are managed through their lifecycle in FOIAonline, which provides for internal tracking and public viewing and searching of all agency responses. The Region 9 Senior Management Team receives status reports generated through FOIAonline to track FOIAs weekly on Mondays, including overdue responses. Therefore, it is important that all information concerning FOIA requests, including withdrawals, deadline extensions, scope changes, payment assurances, and response letters and records, are appropriately entered into the FOIAonline system **no later than Friday of each week.**

Air roles and responsibilities for responding to FOIA requests are described below. For other questions about FOIA and the response process, contact Ceciley Wilder (7-4143 or Colleen McKaughan (520-498-0118)

## **II. Processing FOIA Requests**

1. **FOIA Assignment and Reporting:** Upon receipt of the FOIA request from the Region 9 FOIA Officer, the Air FOIA Coordinator will:
  - a. Consult with the FOIA Associate Director regarding the subject matter of the request and whether Air Division is the appropriate venue for a response;
  - b. notify the Region 9 FOIA Officer if the request should be assigned to another Division in addition to Air;
  - c. notify the Region 9 FOIA Officer if the request does not belong to Air and should be reassigned to another Division;
  - d. notify the Region 9 FOIA Officer if another Division should be assigned the role of Action Office or Coordinating Office;
  - e. track Air FOIA deadlines and provide reminders to assigned Staff and Office Chiefs of upcoming FOIA deadlines; and
  - f. provide Air managers via Dawn Richmond with a weekly status spreadsheet for active FOIAs, including FOIA tracking number, date received, date due, and assigned staff person.
2. **Fees and Fee Waivers:**
  - a. If a FOIA requester is seeking a fee waiver, the Region 9 FOIA Officer will notify the assigned Staff person whether the fee waiver has been granted by Headquarters. Where a fee waiver has not been requested or has been denied, prepare a cost estimate for the search to be conducted and determine whether an assurance of payment is needed.
  - b. An assurance of payment should be obtained from the FOIA requester if fees are expected to exceed either \$25 or a higher amount specified in the request. Unless a waiver of fees has been granted by Headquarters, the Staff person should estimate the processing fee which will be charged as specified in 40 C.F.R. §2.107. **Attorney review time (which includes time spent redacting) should be included in any fee estimate for commercial requesters.** Search fees may apply even when no responsive records are identified or when no responsive records are disclosed to the requester.
  - c. Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. “Search” time includes the time needed to determine if records are responsive. “Review” time includes the time needed to determine if any records (or portions of records) are exempt from release. Fees are calculated as follows (see both charts):

Type of Staff*	Charge per Quarter Hour
Clerical Staff	\$4 per ¼ hour
Professional Staff	\$7 per ¼ hour

Managerial Staff	\$10.25 per ¼ hour
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Type of Requester	Fee Category		
	Search	Review	Duplication
Commercial	YES*	Yes	Yes
Educational	No	No	YES* (100 pages free)
Non-commercial scientific	No	No	YES* (100 pages free)
News Media	No	No	YES* (100 pages free)
All Others	YES*(first 2 hours free)	No	Yes (100 pages free)

\* Note that entries with an asterisk cannot be charged if the Agency fails to comply with response deadlines.

Where assurance of payment is needed, use the Cost Worksheet to calculate estimated fees.<sup>1</sup> In appropriate cases, work with the requester to narrow the request before completing the Cost Worksheet. Send the Cost Worksheet to the Region 9 FOIA Officer (with a copy to the AIR FOIA Coordinator), who will send an assurance of payment letter to the requester through FOIAonline, which will toll the FOIA deadline until the requester submits a written assurance of payment. Once the written assurance of payment has been received, the Region 9 FOIA Officer will notify the Air FOIA Coordinator and adjust the deadline in FOIAonline. If the requester fails to provide an assurance of payment within the required timeframe, the FOIA request will be closed out and a letter to that effect will be sent by the Region 9 FOIA Officer to the requester.

3. Deadlines and Extensions: The staff person will confirm the response deadline within the FOIAonline system with Air FOIA Coordinator and determine if the response can be completed by the deadline as follows, taking into account attorney review time if necessary:
  - a. Where a FOIA response can be completed within the 20 working-day deadline, proceed to completing response.
  - b. Where a FOIA response cannot be completed within the 20 working-day deadline, first determine if “unusual circumstances” apply. “Unusual circumstance” exist when (1) records from field or other locations separate from the office processing the request must be searched; (2) voluminous records must be searched, collected and examined; and (3) another agency or two or more components of EPA must be consulted on the request. If “unusual circumstances” exist, EPA may extend the due date as follows:
    - (i) If the response can be completed within a 10 working-day extension, notify the requester in writing that unusual circumstances exist and provide the new due date.

<sup>1</sup> Region 9’s Cost Worksheet and other FOIA forms, templates and guidance can be found on 9Online at <http://intranet.epa.gov/9online/sites/foia>

(ii) If the response cannot be completed within a 10 working-day extension, provide the requester with the EPA FOIA Public Liaison contact information (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667) and an opportunity to either (a) modify the request so it can be processed within a 10 working-day extension, or (b) agree to an extension for processing the original or modified request.

- c. Where a FOIA response cannot be completed within the 20 working-day deadline and “unusual circumstances” do **not** exist, or if the due date has already been extended and additional time is needed to complete the response, negotiate an extension with the requester and provide the requester with the contact information for the EPA FOIA Public Liaison (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667), who will assist in resolving any disputes. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible.
- d. **In all cases involving an extension**, document in writing whether unusual circumstances exist, the requester’s agreement to an extension, or if there is no agreement, the new due date requested and the justification for the additional time necessary to complete the response, including the timeframes for providing phased responses of releasable records, leaving withholdings to the final response, and providing the EPA FOIA Public Liaison contact information, as appropriate. Provide all documentation regarding the FOIA deadline, extensions, and justifications for extensions and phased responses to the Region 9 FOIA Officer (with a copy to the Air FOIA Coordinator) for entering into FOIAonline.
- e. For Multi-Division FOIA requests, the Action Office is responsible for coordinating any requests for extension of time. The Action Office must work closely with all of the Contributing Offices, including ORC if records need to be reviewed for withholding, to ensure an adequate extension and that negotiated deadlines will be met.

4. Narrow Request where appropriate: Sometimes, requesters seek more records than they really want or need. In such situations, the Air Staff person should work with a requester to narrow the scope of a FOIA request. Staff should consult with an appropriate ORC attorney when necessary to assist with narrowing a search. If a request is narrowed, written confirmation must be provided to the Region 9 FOIA Coordinator with a copy to the Air FOIA Coordinator to be entered into FOIAonline.

5. Record Search: Conduct a reasonable and adequate search to uncover all relevant records responsive to the FOIA request. Unless otherwise specified, searches must be conducted in both hard copies (including offsite records if appropriate) and electronic versions of records. For

FOIA requests requiring centralized email searches, detailed procedures will be provided in guidance posted on the 9online FOIA intranet page. ORC should be contacted for development of centralized email searches or for advice regarding the adequacy of a search.

6. **Record Review:** If any of the responsive records, or portions of records, may be subject to any FOIA exemption, provide those records to ORC for review. For any discretionary exemption (Exemptions 2, 5, 7(a), 8, and 9), along with the records, provide ORC the proposed exemption(s) and the basis for foreseeable harm if the record is released. Record review includes the following inquiries:

- a. Determine if gathered records are responsive to the request.
- b. Determine whether any responsive records are or may be Claimed CBI. If so, use the Initial Denial template letter and follow the CBI substantiation process (see FOIA Response 7.d. below).<sup>2</sup>
- c. Determine whether any responsive records, or portions of records, should be withheld pursuant to any FOIA exemption. If so, use the Partial or Full Denial template letter (see FOIA Response 7.e. or 7.f. below).
- d. **All records, whether being released or withheld, must be reviewed by at least two knowledgeable individuals, one of whom must be a manager or supervisor. The two individuals must sign an internal Records Review form, which will be uploaded into FOIAonline but will not be released to the public.**

7. **FOIA Response:** A complete FOIA response includes gathering all responsive records, reviewing the records for releasability, and preparing the appropriate FOIA response letter. Staff are responsible for providing to the **Air FOIA Coordinator** four types of documentation which will be uploaded into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline (with substantiation); (3) Records Review forms; and (4) electronic versions of response letters and responsive ORC records. Even where ORC is helping to conduct record review for releasability, the Division remains responsible for ensuring that all responsive records and FOIA-related information is uploaded into FOIAonline. If responsive records are not in PDF format, the Air staff person should work with the Air FOIA Coordinator to convert them to PDFs (through scanning or otherwise). There are very limited exceptions to processing FOIA responses electronically through FOIAonline, and these exceptions must be approved by Headquarters. Template correspondence for each type of FOIA response is available on the 9online intranet page: <http://intranet.epa.gov/9online/sites/foia>

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<sup>2</sup> At this juncture, the Staff Attorney may try to negotiate with the FOIA requester to narrow the scope of the FOIA to exclude those documents that do or may have a claim of CBI. Also, the Staff Attorney may try to contact the document submitter informally to determine whether a claim of CBI will in fact be made.

**Note:** There has been a change in the signature requirements for FOIA response letters. Every FOIA response must be signed by a Division Director, including full releases. For Multi-Division FOIAs, the Division Director for the Action Office signs the response letter and the Division Director(s) for the Contributing Office(s) must complete an internal Records Release Authorization form, which will be uploaded into the FOIAonline system, but will not be released to the public.

- a. Full Release: Prepare a Full Release response letter for the Division Director's signature. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. Provide pdf versions of the response letter and records to the Air FOIA Coordinator for delivery to the FOIA requester through FOIAonline. Provide to the Air FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Provide the cost form to the Air FOIA Coordinator for a bill to be prepared through the system.
- b. No records located: If no records are found, prepare a Certification of Search which describes the extent of the records search, and is signed by all employees that searched for records and an Office Chief. Prepare a "No Records" response letter with appeal rights for signature. Provide pdf versions of the "No Records" response and Certification of Search form to Air FOIA Coordinator for uploading onto FOIAonline. **Note: The Certification of Search form is never sent to the FOIA requester but will be maintained in the internal part of the FOIAonline system.**
- c. Initial denial for CBI: Prepare an Initial Denial letter with appeal rights to the FOIA Requester for signature by the Division Director. Provide a pdf version of the Initial Denial letter to the Air FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the Air FOIA Coordinator the Internal Records Review form signed by two individuals, at least one being a manager.

Using the OMB-approved substantiation template (available on the 9online FOIA page), send Request for Substantiation letter to the submitter of potential CBI. Inform submitter by telephone that substantiation letter has been mailed and to notify EPA if it is not received. The submitter has 15 days to substantiate the CBI claim. **Review the submitter's substantiation and provide the Division's comments on the substantiation to ORC.** Following review of the substantiation provided and any Division comments, staff attorney prepares a CBI final determination using the Headquarter's template (located in the OGC Library in the Lotus Notes database) for the Regional Counsel's signature.

Provide a final response letter to the Requester following the expiration of the submitter's appeal period or resolution of any appeal.

- d. Partial Denial: If some of the records, or portions of records, responsive to the FOIA request are determined withholdable under one or more FOIA exemptions, prepare a Partial Denial response identifying withheld records and applicable exemption(s) with



- appeal rights for signature by the Division Director. If a portion of a record is redacted, the exemption under which the redaction is made must be indicated on the record at the place of redaction. **Include review of Partial Denial letter and withheld records by ORC prior to signature by Division Director.** Where applicable, the response should indicate whether an invoice for fees will be forthcoming. For the releasable records, collect them in electronic form where possible. Provide pdf versions of the Partial Denial, releasable records, and cost form to the Air FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the Air FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. **Note:** For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a placeholder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.
- e. Full Denial: Prepare a Full Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by the Division Director. **Include review of Full Denial letter and withheld records by ORC prior to signature by Division Director.** Where applicable, the response should indicate whether an invoice for fees will be forthcoming. **Note:** In the case of a Full Denial issued to a commercial requester, fees should only be charged for extensive review where the requester has been informed that such expenses may be incurred even without records being produced. Provide pdf versions of the Full Denial letter and cost form to the Air FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the Air FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. **Note:** For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a placeholder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.
- f. Phased Response: Where a large volume of records is requested, the staff person should discuss with the FOIA requester a phased approach for responding to the FOIA request. Only the final response should include information, where relevant, about withheld records, fee invoice information, and appeal rights. Each phased release should indicate how many phased releases have been made to date. Provide pdf versions of all correspondence and records for each phased response to the Air FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the Air FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager.

8. Limited Exceptions to Delivery through FOIAonline: The EPA Interim Procedures require all FOIA requests to be managed throughout their lifecycle in FOIAonline. Approval for exceptions to delivering responses through FOIAonline may be obtained from Headquarters by emailing the Agency FOIA Officer, Larry Gottesman at Gottesman.Larry@epa.gov for responses (1) involving very large volumes of paper records where conversion to e-format is not practical; or (2) that are subject to special handling requirements or policies (e.g. records containing personally identifiable information). These exceptions are reviewed on a case-by-case basis by HQ. The decision approving the exception must be uploaded onto the internal portion of FOIAonline. Where an exception has been approved, a placeholder document with contact information for obtaining a copy of the responsive records must be uploaded onto FOIAonline, and copies must be made readily available to future requesters.
9. Ensure all activity on FOIA requests, including deadline extensions and assurance of payment, are provided to the Air FOIA Coordinator and that FOIAonline includes accurate and current information.
10. The Air FOIA Coordinator uploads all communications concerning FOIA requests and responses into FOIAonline, including withdrawals, deadline extensions, scope changes, assurance of payments, internal records release forms, and pdf versions of response letters and releasable records.
11. The Air FOIA Coordinator will work with the Region 9 FOIA Officer to close-out FOIA requests.

# Region 9 Land Division Standard Operating Procedures for Responding to FOIA Requests

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## Summary

**Background.** The attached SOP describes in detail the procedures LND will follow when FOIA requests are assigned to LND for response. It incorporates the Procedures for Responding to FOIA Requests the Agency issued on September 30, 2014 ([http://www.epa.gov/irmpoli8/policies/CIO\\_2157-P-01.1.pdf](http://www.epa.gov/irmpoli8/policies/CIO_2157-P-01.1.pdf)). Below is a short summary of LND's SOPs.

**Regional FOIA Distribution.** FOIA requests received by or assigned to the Region go through the **Region 9 FOIA Officer (IVRY JOHNSON)**, who manages [FOIAonline](#), a multi-agency electronic FOIA tracking system, and assigns the request to the Division that is most likely to house responsive records. The Region 9 FOIA Officer sends the request to the assigned Division's FOIA Coordinator with the deadline for responding to the request. Each division has its own internal assignment method; using that method, the Division FOIA Coordinator enters the staff and manager assignments into FOIAonline. If more than one Division has responsive records (a "Multi-Division FOIA"), the Region 9 FOIA Officer will assign the FOIA to the Division that is likely to have the majority of the responsive records as the "Action Office" and the other Division(s) as "Contributing Office(s)" in FOIAonline. The Action Office will be responsible for processing the request and preparing the response in coordination with the Contributing Office(s). The Contributing Office(s) must coordinate the Agency's response with the Action Office, including uploading responsive records into the system, before the FOIA response is finalized and transmitted to the requester. Divisions should contact the Region 9 FOIA Officer immediately if they have questions about the assignment of the "Action Office" and "Contributing Offices."

The Region 9 FOIA Officer coordinates Fee Waiver and Expedited Processing Requests with EPA Headquarters.

When a FOIA request is assigned to LND, it is sent to **LND's FOIA Coordinator (Ward Danner, a contractor in the RCRA Records Center)**, who then sends the request to the appropriate section chief and assigned staff for response.

If a request has been erroneously assigned to LND or should be assigned to another division, the LND FOIA Coordinator will inform the Region 9 FOIA Officer immediately so that the request can be redirected to the appropriate Division for processing.

The following chart lists the LND offices and the FOIA topics that they cover along with the Section chief and assigned staff who respond to FOIA requests.

Office/Subject	Section Chief	Staff
LND-1-1/Hazardous Waste State Grants, General HW	Cheryl Nelson	Ward Danner

Facility Information, EPA ID numbers, etc.		
LND-2-1/Toxics; Children's Health; & Lead Abatement	Adrienne Priselac	Jacquelyn Hayes
LND-2-2/Pesticides	Pam Cooper	Chuck Kwan, Norman Calero
LND-2-3/Zero Waste, Pollution Prevention, Solid Waste Landfills, Tribal Solid Waste Issues, Recycling, Composting	Zoe Heller	As Assigned
LND-3-1/Tribal Grants; General Tribal Issues; any FOIA's that refer to or request Tribal information	Laura Ebbert	Kimberli Smith
LND-3-2/Pacific Islands Grants; general Pacific Islands Issues	John McCarroll	As Assigned
LND-3-3/Mexico Border Issues	Thomas Torres	As Assigned
LND-4-1/RCRA Cleanup Sites; PCB Cleanup Sites; Malibu High School	Steve Armann	As Assigned
LND-4-2/RCRA Permits; PCB Permits; HW Landfills, Kettleman	Barbara Gross	As Assigned
LND-4-3/Underground Storage Tank Sites and cleanup; Red Hill Site	Steve Linder	Chris Prokop

FOIA requests for LND are primarily handled by contractor staff in the RCRA Records Center. The contractor staff follow the SOPs detailed in *Complying with the Freedom of Information Act SOPs* dated May 2013 that are specified in the contract between Region 9 and the contractor.

The LND FOIA Coordinator will coordinate with LND Section Chiefs and assigned staff for records that are not in the RCRA Records Center and may be located within the LND program offices.

**FOIA Processing.** The LND FOIA Coordinator, with assistance from the assigned program staff, is responsible for ensuring that (1) an appropriate Assurance of Payment is obtained where necessary, (2) the statutory FOIA deadlines are met or an extension is obtained, and (3) the FOIA response is prepared for appropriate signature. If responsive records are found, the LND FOIA Coordinator and/or assigned staff lead coordinates review of those records with ORC to ensure that records are releasable. **Note:** There has been a significant change in the review and signature requirements for FOIA response letters. Every FOIA response, including full

releases of records, must be signed by a Division Director. For Multi-Division FOIAs, Division Directors for the Contributing Office(s) must complete an internal Records Release Authorization form which will be uploaded into FOIAonline but not for release to the public. In addition, all records released or being withheld (in whole or in part) must be reviewed by at least two knowledgeable individuals, including one manager/supervisor. LND also coordinates with ORC to ensure that an attorney is involved for record review when any records will be withheld. Those that have reviewed the records must complete an internal Records Review form which will be uploaded into FOIAonline. All of the template forms and letters can be found on the 9online FOIA intranet page at:

<http://intranet.epa.gov/9online/sites/foia>

**\*Centralized Email Searches.** Searches for responsive email records are performed centrally. Searches for responsive records in Outlook are conducted by OEI's eDiscovery group and searches of Lotus Notes are conducted by Region 9's technical search lead. Procedures for requesting a centralized search will be set forth in guidance entitled "*Region 9 Centralized Searches Which Require a Search of Microsoft Outlook and Lotus Notes Emails*", and posted on the 9online FOIA intranet page.

**Uploading to FOIAonline.** The LND FOIA Coordinator and/or staff lead are responsible for uploading into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline; (3) Records Review forms and, where applicable, a Records Release Authorization form; and (4) electronic versions of response letters and records.

**Regional FOIA Oversight** Region 9's overdue FOIA responses are reported every Monday to the Region's Senior Management Team. Therefore, it is important that LND FOIA Coordinator and/or lead staff provide up-to-date information, including withdrawals, extensions, and responses to the LND FOIA Coordinator, for timely input into the FOIAonline system **no later than noon on Friday of each week.**

## **LND Procedures for Responding to FOIA Requests**

### **I. Overview**

FOIA requests received by or assigned to the Region go through the **Region 9 FOIA Officer (IVRY JOHNSON)**, who manages [FOIAonline](#) and assigns the request to the Division that is most likely to house the responsive records with a deadline for responding to the request. The Region 9 FOIA Officer then provides the request to the FOIA Coordinator for that Division.

If more than one Division has responsive records (a “Multi-Division FOIA”), the Region 9 FOIA Officer will designate the Division that is likely to have the majority of the responsive records as the “Action Office” and will assign the other Division(s) as “Contributing Office(s)” in FOIAonline. The Action Office is responsible for coordinating the response letter, ensuring all records are uploaded into the system, and communicating with the requester about extensions. The Contributing Office(s) must coordinate the Agency’s response with the Action Office, including uploading responsive records into the system before the FOIA response is finalized and transmitted to the requester.

When a FOIA is actually assigned to LND, the FOIA is transmitted to the LND FOIA Coordinator (Ward Danner) in FOIAonline, who then sends the request to the appropriate section chief and assigned staff for response.

If the FOIA request is Multi-Divisional, LND will either be designated the Action Office or a Contributing Office, and LND must coordinate with the other Division(s) accordingly. Where LND is the Action Office, LND is responsible for preparing and signing the response letter, ensuring all records and forms are uploaded into the system, and communicating with the requester about extensions. Where LND is a Contributing Office, the LND FOIA Coordinator must ensure that all of LND’s responsive records and the internal Records Release Authorization form are uploaded into FOIAonline.

If a request has been erroneously assigned to LND or should be assigned to another division, the LND FOIA Coordinator will inform the Region 9 FOIA Officer immediately so that the request can be redirected to the appropriate Division for processing.

FOIA requests for LND are primarily handled by contractor staff in the RCRA Records Center. The contractor staff follow the SOPs detailed in *Complying with the Freedom of Information Act SOPs* dated May 2013 that are specified in the contract between Region 9 and the contractor.

The LND FOIA Coordinator will coordinate with LND Section Chiefs and assigned staff for records that are not in the RCRA Records Center and may be located within the LND program offices. Once the FOIA assignment is determined, the **LND FOIA Coordinator** enters into FOIAonline who is responsible for responding to the FOIA request.

All FOIA requests are managed through their lifecycle in FOIAonline, which provides for internal tracking and public viewing and searching of all agency responses. The Region 9 Senior Management Team receives status reports generated through FOIAonline to track FOIAs weekly on Mondays, including overdue responses. Therefore, it is important that all information concerning FOIA requests, including withdrawals, deadline extensions, scope changes, payment assurances, and response letters and records, are appropriately entered into the FOIAonline system no later than Friday of each week.

LND roles and responsibilities for responding to FOIA requests are described below. Regional roles and responsibilities are described only insofar as they are relevant to the LND FOIA Procedures. For other questions about FOIA and the response process, contact Ivry Johnson (7-4251), or Ward Danner (7-4596).

## **II. Processing FOIA Requests**

1. **FOIA Assignment and Reporting:** Upon receipt of the FOIA request from the Region 9 FOIA Officer, the LND FOIA Coordinator will:
  - a. follow the standard operating procedures in *Complying with the Freedom of Information Act SOPs* dated May 2013 to search the RCRA Records Center for responsive documents and/or;
  - b. send the FOIA request to the LND manager/staff who would have responsive documents;
  - c. notify the Region 9 FOIA Officer if the request should be assigned to another Division in addition to LND;
  - d. notify the Region 9 FOIA Officer if the request does not belong to LND and should be reassigned to another Division;
  - e. notify the Region 9 FOIA Officer if another Division should be assigned the role of Action Office or Coordinating Office;
  - f. track LND FOIA deadlines and provide reminders to assigned Section Chief/Staff of upcoming FOIA deadlines;
  - g. coordinate with Region 9 FOIA Officer (per the R9 Interim Procedure for Centralized Searches of Microsoft Outlook Email) if extensive Microsoft Outlook searches are required;
  - h. upload all communications concerning FOIA requests and FOIA responses themselves into the FOIAonline system, including withdrawals, deadline extensions, scope changes, assurance of payments, and pdf versions of response letters and releasable records; and
  - i. coordinate with Region 9 FOIA Officer to close-out FOIA requests.

**NOTE: ORC should always be informed of a FOIA if there is current ORC activity with regard to the subject of the FOIA. Where records may be withheld, ORC must be**

involved with the document review and response. In other instances, staff can contact ORC for legal assistance with portions of the FOIA. These roles do not, however, transfer the responsibility for a FOIA to ORC.

1. Reviews records proposed for withholding.
2. Can assist program in obtaining extensions and narrowing scope of FOIA request.
3. Reviews any FOIA response letter providing a full or partial denial or initial denial of records for CBI.

2. Fee and Fee Waivers:

- a. If a FOIA requester is seeking a fee waiver, the Region 9 FOIA Officer will notify the LND FOIA Coordinator whether the fee waiver has been granted by Headquarters. Where a fee waiver has not been requested or has been denied, prepare a cost estimate for the search to be conducted and determine whether an assurance of payment is needed.
- b. An assurance of payment should be obtained from the FOIA requester if fees are expected to exceed either \$25 or a higher amount specified in the request. Unless a waiver of fees has been granted by Headquarters, the LND FOIA Coordinator should estimate the processing fee which will be charged as specified in 40 C.F.R. §2.107. Attorney review time (which includes time spent redacting) should be included in any fee estimate for commercial requesters. Search fees may apply even when no responsive records are identified or when no responsive records are disclosed to the requester.
- c. Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. "Search" time includes the time needed to determine if records are responsive. "Review" time includes the time needed to determine if any records (or portions of records) are exempt from release. Fees are calculated as follows (see both charts):

Type of Staff*	Charge per Quarter Hour
Clerical Staff	\$4 per ¼ hour
Professional Staff	\$7 per ¼ hour
Managerial Staff	\$10.25 per ¼ hour

Type of Requester	Fee Category		
	Search	Review	Duplication
Commercial	YES*	Yes	Yes
Educational	No	No	YES* (100 pages free)
Non-commercial scientific	No	No	YES* (100 pages free)
News Media	No	No	YES* (100 pages free)



All Others	YES*(first 2 hours free) No	Yes (100 pages free)
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\* Note that entries with an asterisk cannot be charged if the Agency fails to comply with response deadlines.

Where assurance of payment is needed, use the Cost Worksheet to calculate estimated fees.<sup>1</sup> In appropriate cases, work with the requester to narrow the request before completing the Cost Worksheet. Send the Cost Worksheet to the Region 9 FOIA Officer who will send an assurance of payment letter to the requester through FOIAonline, which will toll the FOIA deadline until the requester submits a written assurance of payment. Once the written assurance of payment has been received, the Region 9 FOIA Officer will notify the LND FOIA Coordinator and adjust the deadline in FOIAonline. If the requester fails to provide an assurance of payment within the required timeframe, the FOIA request will be closed out and a letter to that effect will be sent by the Region 9 FOIA Officer to the requester.

3. Deadlines and Extensions: The LND FOIA Coordinator will confirm the response deadline within the FOIAonline system and determine if the response can be completed by the deadline (including, where applicable, attorney review time) as follows:
  - a) Where a FOIA response can be completed within the 20 working-day deadline, proceed to completing response.
  - b) Where a FOIA response cannot be completed within the 20 working-day deadline, first determine if “unusual circumstances” apply. “Unusual circumstance” exist when (1) records from field or other locations separate from the office processing the request must be searched; (2) voluminous records must be searched, collected and examined; and (3) another agency or two or more components of EPA must be consulted on the request. If “unusual circumstances” exist, EPA may extend the due date as follows:
    - (i) If the response can be completed within a 10 working-day extension, notify the requester in writing that unusual circumstances exist and provide the new due date.
    - (ii) If the response cannot be completed within a 10 working-day extension, provide the requester with the EPA FOIA Public Liaison contact information (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667) and an opportunity to either (a) modify

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<sup>1</sup> Region 9’s Cost Worksheet and other FOIA forms, templates and guidance can be found on 9Online at <http://intranet.epa.gov/9online/sites/foia>

the request so it can be processed within a 10 working-day extension, or  
(b) agree to an extension for processing the original or modified request.

- c) Where a FOIA response cannot be completed within the 20 working-day deadline, and “unusual circumstances” do not exist, or if the due date has already been extended and additional time is needed to complete the response, negotiate an extension with the requester and provide the requester with the contact information for the EPA FOIA Public Liaison (available at the EPA FOIA Requester Service Center- Hotline number (202) 566-1667), who will assist in resolving any disputes. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible.
  - d) **In all cases involving an extension**, document in writing whether unusual circumstances exist, the requester’s agreement to an extension, or if there is no agreement, the new due date requested and the justification for the additional time necessary to complete the response, including the timeframes for providing phased responses of releasable records, leaving withholdings to the final response, and providing the EPA FOIA Public Liaison contact information, as appropriate. Provide all documentation regarding the FOIA deadline, extensions, and justifications for extensions and phased responses to the Region 9 FOIA Officer for entering into FOIAonline.
  - e) For Multi-Division FOIA requests, the Action Office is responsible for coordinating any requests for extension of time. The Action Office must work closely with all of the Contributing Offices, including ORC if records need to be reviewed or withheld, to ensure an adequate extension and that negotiated deadlines will be met.
4. Narrow Request where appropriate: Sometimes, requesters may seek more records than they really want or need. In such situations, the LND FOIA Coordinator or staff lead should work with a requester to narrow the scope of a FOIA request; consult with an appropriate ORC attorney when necessary to assist with narrowing a search. If a request is narrowed, written confirmation should be provided to the LND FOIA Coordinator to be entered into FOIAonline.
5. Record Search: Conduct a reasonable and adequate search to uncover all relevant records responsive to the FOIA request following this SOP and the procedures established in *Complying with the Freedom of Information Act SOPs* dated May 2013. Include ORC if advice is needed regarding the adequacy of a search or if ORC may have responsive documents. Unless otherwise specified, searches must be conducted in both hard copies (including offsite records if appropriate) and electronic versions of records. For FOIA requests requiring centralized email searches, detailed procedures will be provided in guidance posted on the 9online FOIA intranet page. Contact ORC for development of centralized email searches or for advice regarding the adequacy of a search.

6. **Record Review:** If any of the responsive records, or portions of records, may be subject to any FOIA exemption, provide those records to ORC for review. For any discretionary exemption (Exemptions 2, 5, 7(a), 8, and 9), along with the records, provide ORC the proposed exemption(s) and the basis for foreseeable harm if the record is released. Record review includes the following inquiries:
- a) Determine if gathered records are responsive to the request.
  - b) Determine whether any responsive records are or may be Claimed CBI. If so, use the Initial Denial template letter and follow the CBI substantiation process (see FOIA Response 7.c. below).<sup>2</sup>
  - c) Determine whether any responsive records, or portions of records, should be withheld pursuant to any FOIA exemption. If so, use the Partial or Full Denial template letter (see FOIA Response 7.d. or 7.e. below).
  - d) **All records, whether being released or withheld, must be reviewed by at least two knowledgeable individuals, one of whom must be a manager or supervisor. The two individuals must sign an internal Records Review form, which will be uploaded into FOIAonline but will not be released to the public.**
7. **FOIA Response:** A complete FOIA response includes gathering all responsive records, reviewing the records for releasability in consultation with ORC, and preparing the appropriate FOIA response letter. The LND FOIA Coordinator will upload into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline (with substantiation); (3) Records Review forms; and (4) electronic version of response letters and responsive LND records. **(NOTE: Even where ORC is helping to conduct record review for releasability, the Division remains responsible for ensuring that all responsive records and FOIA-related information is uploaded into FOIAonline).** If responsive documents are not in PDF format, the LND FOIA Coordinator and/or staff lead should work with the LND Administrative Staff to convert them to PDFs. There are very limited exceptions to processing FOIA responses electronically through FOIAonline, and these exceptions must be approved by Headquarters. Template correspondence for each type of FOIA response is available on the 9online intranet page: <http://intranet.epa.gov/9online/sites/foia>

**Note:** There has been a change in the signature requirements for FOIA response letters. Every FOIA response must be signed by a Division Director, including full releases. For Multi-Division FOIAs, the Division Director for the

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<sup>2</sup> At this juncture, the LND FOIA Coordinator and/or staff lead may try to negotiate with the FOIA requester to narrow the scope of the FOIA to exclude those documents that do or may have a claim of CBI. Also, ORC may try to contact the document submitter informally to determine whether a claim of CBI will in fact be made.

**Action Office signs the response letter and the Division Director(s) for the Contributing Office(s) must complete an internal Records Release Authorization form, which will be uploaded into the FOIAonline system, but will not be released to the public.**

- a. Full Release: Prepare a Full Release response letter for LND Division Director's signature. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. Provide pdf versions of the response letter and records to the LND FOIA Coordinator for delivery to the FOIA requester through FOIAonline. Provide to the LND FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Provide the cost form to the LND FOIA Coordinator for a bill to be prepared through the system.
- b) No records located: If no records are found, prepare a Certification of Search which describes the extent of the records search, and is signed by all employees that searched for records and a Section Chief. Prepare a "No Records" response letter with appeal rights for signature. Provide pdf versions of the "No Records" response and Certification of Search form to LND FOIA Coordinator for uploading onto FOIAonline. Note: The Certification of Search form is never sent to the FOIA requester but will be maintained in the internal part of the FOIAonline system.
- c) Initial denial for CBI: Prepare an Initial Denial letter with appeal rights to the FOIA Requester for signature by the Division Director. Provide a pdf version of the Initial Denial letter to the LND FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the LND FOIA Coordinator the Internal Records Review form signed by two individuals, at least one being a manager.

Using the OMB-approved substantiation template (available on the 9online FOIA page), send Request for Substantiation letter to the submitter of potential CBI. Inform submitter by telephone that substantiation letter has been mailed and to notify EPA if it is not received. The submitter has 15 days to substantiate the CBI claim. Review the submitter's substantiation and provide the Division's comments on the substantiation to ORC. Following review of the substantiation provided and any Division comments, ORC prepares a CBI final determination using the Headquarters' template (located in the OGC Library in the Lotus Notes database) for the Division Director's signature.

Provide a final response letter to the Requester following the expiration of the submitter's appeal period or resolution of any appeal.

- d) Partial Denial: If some of the records, or portions of records, responsive to the FOIA request are determined withholdable under one or more FOIA exemptions, prepare a Partial Denial response identifying withheld records and applicable

exemption(s) with appeal rights for signature by the Division Director. If a portion of a record is redacted, the exemption under which the redaction is made must be indicated on the record at the place of redaction. Include review of Partial Denial letter by ORC prior to signature by Division Director. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. For the releasable documents, collect them in electronic form where possible. Provide pdf versions of the Partial Denial, releasable documents, and cost form to the LND FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the LND FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Note: For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.

- e) Full Denial: Prepare a Full Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by the Division Director. Include review of Full Denial letter by ORC prior to signature by Division Director. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. Note: In the case of a Full Denial issued to a commercial requester, fees should only be charged for extensive review where the requester has been informed that such expenses may be incurred even without documents being produced. Provide pdf versions of the Full Denial letter and cost form to the LND FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the LND FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Note: For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.
- f) Phased Response: Where a large volume of documents is requested, the LND FOIA Coordinator and/or staff lead should discuss with the FOIA requester a phased approach for responding to the FOIA request. Only the final response should include information, where relevant, about withheld documents, fee invoice information, and appeal rights. Each phased release should indicate how many phased releases have been made to date. Provide pdf versions of all correspondence and documents for each phased response to the LND FOIA

Coordinator for delivery to the FOIA requester through the FOIAonline system.  
Provide to the LND FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager.

8. Limited Exceptions to Delivery through FOIAonline: The EPA Interim Procedures require all FOIA requests to be managed throughout their lifecycle in FOIAonline. Approval for exceptions to delivering responses through FOIAonline may be obtained from Headquarters by emailing the Agency FOIA Officer, Larry Gottesman at Gottesman.Larry@epa.gov for responses (1) involving very large volumes of paper records where conversion to e-format is not practical; or (2) that are subject to special handling requirements or policies (e.g. records containing personally identifiable information). These exceptions are reviewed on a case-by-case basis by Headquarters. The decision approving the exception must be uploaded onto FOIAonline. Where an exception has been approved, a placeholder document with contact information for obtaining a copy of the responsive records must be uploaded onto FOIAonline, and copies must be made readily available to future requesters.
9. Ensure all activity on FOIA requests, including deadline extensions and assurance of payment, are provided to the LND FOIA Coordinator and that FOIAonline includes accurate and current information.
10. The LND FOIA Coordinator uploads all communications concerning FOIA requests and responses into FOIAonline, including withdrawals, deadline extensions, scope changes, assurance of payments, internal records release forms, and pdf versions of response letters and releasable records.
11. The LND FOIA Coordinator will work with the Region 9 FOIA Officer to close-out FOIA requests.

## MTS FOIA Procedure

When a FOIA request is assigned to MTS, it is sent to **MTS's FOIA Coordinator (Nida Navarra)**, who then forwards the request to MTS managers for appropriate assignment to a staff.. If the request has been erroneously assigned to MTS or should be assigned to another division, the MTS FOIA Coordinator will inform the Region 9 FOIA Officer immediately so that the request can be redirected to the appropriate Division for processing.

**FOIA Processing.** The assigned **MTS Staff** is responsible for ensuring that (1) an appropriate Assurance of Payment is obtained where necessary, (2) the statutory FOIA deadlines are met or an extension is obtained, (3) the appropriate supporting forms are prepared; and (4) the FOIA response is prepared for the Assistant Regional Administrator signature.

**\*Centralized Email Searches.** Searches for responsive email records are performed centrally. Searches for responsive records in Outlook are conducted by OEI's eDiscovery group and searches of Lotus Notes are conducted by Region 9's technical search lead. Procedures for requesting a centralized search will be set forth in guidance entitled "*Region 9 Centralized Searches Which Require a Search of Microsoft Outlook and Lotus Notes Emails*", and posted on the 9online FOIA intranet page.

**Uploading to FOIAonline.** **MTS staff** are responsible for providing to the **MTS FOIA Coordinator** four types of information to be uploaded into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline; (3) Records Review forms and, where applicable, a Records Release Authorization form; and (4) electronic versions of response letters and responsive MTS records. ¶

## MTS Procedures for Responding to FOIA Requests

### I. **Overview**

When a FOIA is actually assigned to MTS, the FOIA is transmitted to the MTS managers to determine the appropriate Staff for assignment. FOIA assignments within MTS are determined by **MTS managers** based on **Staff** that matter involved or distributed to the Staff with the most relevant subject matter expertise.. Once the FOIA assignment is made, managers inform the **MTS FOIA Coordinator** to enter the names of the **MTS Staff** into FOIAonline.

If the FOIA request is Multi-Divisional, MTS will either be designated's internal Records Release Authorization form are uploaded into FOIAonline.

All FOIA requests are managed through their lifecycle in FOIAonline, which provides for internal tracking and public viewing and searching of all agency responses. The Region 9 Senior Management Team receives status reports generated through FOIAonline to track FOIAs weekly on Mondays, including overdue responses. Therefore, it is important that all information concerning FOIA requests, including withdrawals, deadline extensions, scope changes, payment

assurances, and response letters and records, are appropriately entered into the FOIAonline system no later than Friday of each week.

MTS roles and responsibilities for responding to FOIA requests are described below. Regional roles and responsibilities are described only insofar as they are relevant to the MTS FOIA Procedures. For other questions about FOIA and the response process, contact Nida Navarra (2-3683), Carolyn Truong (7-4268), Sandy Leon (2-3878), or Bethany Dreyfus (2-3886).

## **II. Processing FOIA Requests**

1. **FOIA Assignment and Reporting:** Upon receipt of the FOIA request from the Region 9 FOIA Officer, the MTS FOIA Coordinator will:
  - a. send the FOIA request to the MTS managers for determining appropriate Staff assignment;
  - b. notify the Region 9 FOIA Officer if the request should be assigned to another Division in addition to MTS;
  - c. notify the Region 9 FOIA Officer if the request does not belong to MTS and should be reassigned to another Division;
  - d. notify the Region 9 FOIA Officer if another Division should be assigned the role of Action Office or Coordinating Office;
  - e. track MTS FOIA deadlines and provide reminders to assigned Staff and Section Chiefs of upcoming FOIA deadlines; and
  - f. provide MTS managers with a weekly status spreadsheet for active FOIAs, including FOIA tracking number, date received, date due, and assigned Staff.
2. **Fees and Fee Waivers:**
  - a. If a FOIA requester is seeking a fee waiver, the Region 9 FOIA Officer will notify the assigned Staff whether the fee waiver has been granted by Headquarters. Where a fee waiver has not been requested or has been denied, prepare a cost estimate for the search to be conducted and determine whether an assurance of payment is needed.
  - b. An assurance of payment should be obtained from the FOIA requester if fees are expected to exceed either \$25 or a higher amount specified in the request. Unless a waiver of fees has been granted by Headquarters, the Staff should estimate the processing fee which will be charged as specified in 40 C.F.R. §2.107. **(The fee's includes time spent redacting)** Search fees may apply even when no responsive records are identified or when no responsive records are disclosed to the requester.
  - c. Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. "Search" time includes the time needed to determine if records are responsive. "Review" time includes the time



needed to determine if any records (or portions of records) are exempt from release. Fees are calculated as follows (see both charts):

Type of Staff*	Charge per Quarter Hour
Clerical Staff	\$4 per ¼ hour
Professional Staff	\$7 per ¼ hour
Managerial Staff	\$10.25 per ¼ hour

Type of Requester	Fee Category		
	Search	Review	Duplication
Commercial	YES*	Yes	Yes
Educational	No	No	YES* (100 pages free)
Non-commercial scientific	No	No	YES* (100 pages free)
News Media	No	No	YES* (100 pages free)
All Others	YES*(first 2 hours free)	No	Yes (100 pages free)

\* Note that entries with an asterisk cannot be charged if the Agency fails to comply with response deadlines.

Where assurance of payment is needed, use the Cost Worksheet to calculate estimated fees.<sup>1</sup> In appropriate cases, work with the requester to narrow the request before completing the Cost Worksheet. Send the Cost Worksheet to the Region 9 FOIA Officer (with a copy to the MTS FOIA Coordinator), who will send an assurance of payment letter to the requester through FOIAonline, which will toll the FOIA deadline until the requester submits a written assurance of payment. Once the written assurance of payment has been received, the Region 9 FOIA Officer will notify the MTS FOIA Coordinator and adjust the deadline in FOIAonline. If the requester fails to provide an assurance of payment within the required timeframe, the FOIA request will be closed out and a letter to that effect will be sent by the Region 9 FOIA Officer to the requester.

3. Deadlines and Extensions: The Staff will confirm the response deadline within the FOIAonline system with MTS FOIA Coordinator and determine if the response can be completed by the deadline including that, where applicable, attorney review time should be considered in calculating response timing.
  - a. Where a FOIA response can be completed within the 20 working-day deadline, proceed to completing response.
  - b. Where a FOIA response cannot be completed within the 20 working-day deadline, first determine if “unusual circumstances” apply. “Unusual circumstance” exist when (1) records from field or other locations separate from the office processing the request must be searched; (2) voluminous records must be searched, collected and examined; and (3) another agency or two or more components of EPA must

<sup>1</sup> Region 9’s Cost Worksheet and other FOIA forms, templates and guidance can be found on 9Online at <http://intranet.epa.gov/9online/sites/foia>

be consulted on the request. If “unusual circumstances” exist, EPA may extend the due date as follows:

- (i) If the response can be completed within a 10 working-day extension, notify the requester in writing that unusual circumstances exist and provide the new due date.
- (ii) If the response cannot be completed within a 10 working-day extension, provide the requester with the EPA FOIA Public Liaison contact information (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667) and an opportunity to either (a) modify the request so it can be processed within a 10 working-day extension, or (b) agree to an extension for processing the original or modified request.

- c. Where a FOIA response cannot be completed within the 20 working-day deadline and “unusual circumstances” do **not** exist, or if the due date has already been extended and additional time is needed to complete the response, negotiate an extension with the requester and provide the requester with the contact information for the EPA FOIA Public Liaison (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667), who will assist in resolving any disputes. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible.
- d. **In all cases involving an extension**, document in writing whether unusual circumstances exist, the requester’s agreement to an extension, or if there is no agreement, the new due date requested and the justification for the additional time necessary to complete the response, including the timeframes for providing phased responses of releasable records, leaving withholdings to the final response, and providing the EPA FOIA Public Liaison contact information, as appropriate. Provide all documentation regarding the FOIA deadline, extensions, and justifications for extensions and phased responses to the Region 9 FOIA Officer (with a copy to the MTS FOIA Coordinator) for entering into FOIAonline.
- e. For Multi-Division FOIA requests, the Action Office is responsible for coordinating any requests for extension of time. The Action Office must work closely with all of the Contributing Offices to ensure an adequate extension and that negotiated deadlines will be met.

4. Narrow Request where appropriate: Sometimes, requesters seek more records than they really want or need. In such situations, the MTS Staff should work with a requester to narrow the scope of a FOIA request. Employees should consult with an appropriate ORC attorney when necessary to assist with narrowing a search. If a request is narrowed, written confirmation must be provided to the FOIA Coordinator to be entered into FOIAonline.

5. Record Search: Conduct a reasonable and adequate search to uncover all relevant records responsive to the FOIA request. Unless otherwise specified, searches must be conducted in both hard copies (including offsite records if appropriate) and electronic versions of records. For FOIA requests requiring centralized email searches, detailed procedures will be provided in guidance posted on the 9online FOIA intranet page. [ORC should be contacted for development of centralized email searches or for advice regarding the adequacy of a search.]

6. Record Review: If any of the responsive records, or portions of records, may be subject to any FOIA exemption, provide those records to ORC for review. For any discretionary exemption (Exemptions 2, 5, 7(a), 8, and 9), along with the records, provide ORC the proposed exemption(s) and the basis for foreseeable harm if the record is released.] Record review includes the following inquiries:

- a. Determine if gathered records are responsive to the request.
- b. Determine whether any responsive records are or may be Claimed CBI. If so, use the Initial Denial template letter and follow the CBI substantiation process (see FOIA Response 7.d. below).<sup>2</sup>
- c. Determine whether any responsive records, or portions of records, should be withheld pursuant to any FOIA exemption. If so, use the Partial or Full Denial template letter (see FOIA Response 7.e. or 7.f. below).
- d. **All records, whether being released or withheld, must be reviewed by at least two knowledgeable individuals, one of whom must be a manager or supervisor. The two individuals must sign an internal Records Review form, which will be uploaded into FOIAonline but will not be released to the public.**

7. FOIA Response: A complete FOIA response includes gathering all responsive records, reviewing the records for releasability, and preparing the appropriate FOIA response letter. **MTS Staff** are responsible for providing to the **MTS FOIA Coordinator** four types of documentation which will be uploaded into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline (with substantiation); (3) Records Review forms; and (4) electronic versions of response letters and responsive MTS records. **Even where ORC is helping to conduct record review for releasability, the Division remains responsible for ensuring that all responsive records and FOIA-related information is uploaded into FOIAonline.]** If responsive records are not in PDF format, the **MTS Staff** should work with the **MTS Administrative Staff** to convert them to PDFs (through scanning or otherwise). There are very limited exceptions to processing FOIA responses electronically through FOIAonline, and these exceptions must be approved by Headquarters. Template correspondence for each type

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<sup>2</sup> At this juncture, the Staff Attorney may try to negotiate with the FOIA requester to narrow the scope of the FOIA to exclude those documents that do or may have a claim of CBI. Also, the Staff Attorney may try to contact the document submitter informally to determine whether a claim of CBI will in fact be made.

of FOIA response is available on the 9online intranet page:  
<http://intranet.epa.gov/9online/sites/foia>

**Note:** There has been a change in the signature requirements for FOIA response letters. Every FOIA response must be signed by a Division Director, including full releases. For Multi-Division FOIAs, the Division Director for the Action Office signs the response letter and the Division Director(s) for the Contributing Office(s) must complete an internal Records Release Authorization form, which will be uploaded into the FOIAonline system, but will not be released to the public.

- a. Full Release: Prepare a Full Release response letter for the Assistant Regional Administrator's signature. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. Provide pdf versions of the response letter and records to the MTS FOIA Coordinator for delivery to the FOIA requester through FOIAonline. Provide to the MTS FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Provide the cost form to the MTS FOIA Coordinator for a bill to be prepared through the system.
- b. No records located: If no records are found, prepare a Certification of Search which describes the extent of the records search, and is signed by all employees that searched for records and a Section Chief. Prepare a "No Records" response letter with appeal rights for signature. Provide pdf versions of the "No Records" response and Certification of Search form to MTS FOIA Coordinator for uploading onto FOIAonline. **Note:** The Certification of Search form is never sent to the FOIA requester but will be maintained in the internal part of the FOIAonline system.
- c. Initial denial for CBI: Prepare an Initial Denial letter with appeal rights to the FOIA Requester for signature by the Regional Counsel. Provide a pdf version of the Initial Denial letter to the ORC FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the MTS FOIA Coordinator the Internal Records Review form signed by two individuals, at least one being a manager.

Using the OMB-approved substantiation template (available on the 9online FOIA page), send Request for Substantiation letter to the submitter of potential CBI. Inform submitter by telephone that substantiation letter has been mailed and to notify EPA if it is not received. The submitter has 15 days to substantiate the CBI claim. Review the submitter's substantiation and provide the Division's comments on the substantiation to ORC. Following review of the substantiation provided and any Division comments, Staff Attorney prepares a CBI final determination using the Headquarter's template (located in the OGC Library in the Lotus Notes database) for the Regional Counsel's signature.

Provide a final response letter to the Requester following the expiration of the submitter's appeal period or resolution of any appeal.

- d. Partial Denial: If some of the records, or portions of records, responsive to the FOIA request are determined withholdable under one or more FOIA exemptions, prepare a Partial Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by the Regional Counsel. If a portion of a record is redacted, the exemption under which the redaction is made must be indicated on the record at the place of redaction. **Review of Partial Denial letter and withheld records by ORC prior to signature by Division Director.** Where applicable, the response should indicate whether an invoice for fees will be forthcoming. For the releasable records, collect them in electronic form where possible. Provide pdf versions of the Partial Denial, releasable records, and cost form to the ORC FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the ORC FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. **Note:** For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.
- e. Full Denial: Prepare a Full Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by the Regional Counsel. **Include review of Full Denial letter and withheld records by ORC prior to signature by Division Director.** Where applicable, the response should indicate whether an invoice for fees will be forthcoming. **Note:** In the case of a Full Denial issued to a commercial requester, fees should only be charged for extensive review where the requester has been informed that such expenses may be incurred even without records being produced. Provide pdf versions of the Full Denial letter and cost form to the MTS FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the MTS FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. **Note:** For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.
- f. Phased Response: Where a large volume of records is requested, the Staff Attorney should discuss with the FOIA requester a phased approach for responding to the FOIA request. Only the final response should include information, where relevant, about withheld records, fee invoice information, and appeal rights. Each phased release should indicate how many phased releases have been made to date. Provide pdf versions of all correspondence and records for each phased response to the ORC FOIA Coordinator for delivery to the FOIA requester through the FOIAonline

system. Provide to the ORC FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager.

8. Limited Exceptions to Delivery through FOIAonline: The EPA Interim Procedures require all FOIA requests to be managed throughout their lifecycle in FOIAonline. Approval for exceptions to delivering responses through FOIAonline may be obtained from Headquarters by emailing the Agency FOIA Officer, Larry Gottesman at Gottesman.Larry@epa.gov for responses (1) involving very large volumes of paper records where conversion to e-format is not practical; or (2) that are subject to special handling requirements or policies (e.g. records containing personally identifiable information). These exceptions are reviewed on a case-by-case basis by HQ. The decision approving the exception must be uploaded onto the internal portion of FOIAonline. Where an exception has been approved, a placeholder document with contact information for obtaining a copy of the responsive records must be uploaded onto FOIAonline, and copies must be made readily available to future requesters.
9. Ensure all activity on FOIA requests, including deadline extensions and assurance of payment, are provided to the ORC FOIA Coordinator and that FOIAonline includes accurate and current information.
10. The MTS FOIA Coordinator uploads all communications concerning FOIA requests and responses into FOIAonline, including withdrawals, deadline extensions, scope changes, assurance of payments, internal records release forms, and pdf versions of response letters and releasable records.
11. The MTS FOIA Coordinator will work with the Region 9 FOIA Officer to close-out FOIA requests.

# Region 9 ORC Standard Operating Procedures for Responding to FOIA Requests

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## Summary

**Background.** The attached SOP describes in detail the procedures ORC will follow when FOIA requests are assigned to ORC for response. It incorporates the Procedures for Responding to FOIA Requests the Agency issued on September 30, 2014 ([http://www.epa.gov/irmpoli8/policies/CIO\\_2157-P-01.1.pdf](http://www.epa.gov/irmpoli8/policies/CIO_2157-P-01.1.pdf)). Below is a short summary of ORC's SOPs.

**Regional FOIA Distribution.** FOIA requests received by or assigned to the Region go through the **Region 9 FOIA Officer (IVRY JOHNSON)**, who manages [FOIAonline](#), a multi-agency electronic FOIA tracking system, and assigns the request to the Division that is most likely to house responsive records. The Region 9 FOIA Officer sends the request to the assigned Division's FOIA Coordinator with the deadline for responding to the request. Each division has its own internal assignment method; using that method, the Division FOIA Coordinator enters the staff and manager assignments into FOIAonline. If more than one Division has responsive records (a "Multi-Division FOIA"), the Region 9 FOIA Officer will assign the FOIA to the Division that is likely to have the majority of the responsive records as the "Action Office" and the other Division(s) as "Contributing Office(s)" in FOIAonline. The Action Office will be responsible for processing the request and preparing the response in coordination with the Contributing Office(s). The Contributing Office(s) must coordinate the Agency's response with the Action Office, including uploading responsive records into the system, before the FOIA response is finalized and transmitted to the requester. Divisions should contact the Region 9 FOIA Officer immediately if they have questions about the assignment of the "Action Office" and "Contributing Offices."

The Region 9 FOIA Officer coordinates Fee Waiver and Expedited Processing Requests with EPA Headquarters.

When a FOIA request is assigned to ORC, it is sent to **ORC's FOIA Coordinator (STEVE ARMSEY)**, who then forwards the request to ORC managers for appropriate assignment to a staff attorney. FOIA assignments within ORC are determined by **ORC management** based on whether an **ORC Staff Attorney** is already assigned to the matter involved in the FOIA request. If not, FOIA assignments are done by each Branch. If a request has been erroneously assigned to ORC or should be assigned to another division, the ORC FOIA Coordinator will inform the Region 9 FOIA Officer immediately so that the request can be redirected to the appropriate Division for processing.

**FOIA Processing.** The assigned **ORC Staff Attorney** is responsible for ensuring that (1) an appropriate Assurance of Payment is obtained where necessary, (2) the statutory FOIA deadlines are met or an extension is obtained, (3) the appropriate supporting forms are prepared; and (4) the FOIA response is prepared for the Regional Counsel's signature. **Note: There has been a significant change in the review and signature requirements for FOIA response letters. Every FOIA response, including full releases of records, must be signed by a Division**

**Director.** For Multi-Division FOIAs, Division Directors for the Contributing Office(s) must complete an internal Records Release Authorization form which will be uploaded into FOIAonline but not for release to the public. In addition, all records released or being withheld (in whole or in part) must be reviewed by at least two knowledgeable individuals, including one manager/supervisor. Those that have reviewed the records must complete an internal Records Review form which will be uploaded into FOIAonline. All of the template forms and letters can be found on the 9online FOIA intranet page at: <http://intranet.epa.gov/9online/sites/foia>

**\*Centralized Email Searches.** Searches for responsive email records are performed centrally. Searches for responsive records in Outlook are conducted by OEI's eDiscovery group and searches of Lotus Notes are conducted by Region 9's technical search lead. Procedures for requesting a centralized search will be set forth in guidance entitled "*Region 9 Centralized Searches Which Require a Search of Microsoft Outlook and Lotus Notes Emails*", and posted on the 9online FOIA intranet page.

**Uploading to FOIAonline.** ORC Staff Attorneys are responsible for providing to the ORC FOIA Coordinator four types of information to be uploaded into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline; (3) Records Review forms and, where applicable, a Records Release Authorization form; and (4) electronic versions of response letters and responsive ORC records.

**Regional FOIA Oversight.** Region 9's overdue FOIA responses are reported every Monday to the Region's Senior Management Team. Therefore, it is important that ORC Staff Attorneys provide up-to-date information, including withdrawals, extensions, and responses, to the ORC FOIA Coordinator for timely input into the FOIAonline system **no later than noon on Friday** of each week.



## ORC Procedures for Responding to FOIA Requests

### I. Overview

FOIA requests received by or assigned to the Region go through the **Region 9 FOIA Officer (IVRY JOHNSON)**, who manages [FOIAonline](#) and assigns the request to the Division that is most likely to house the responsive records with a deadline for responding to the request. The Region 9 FOIA Officer then provides the request to the FOIA Coordinator for that Division.

If more than one Division has responsive records (a “Multi-Division FOIA”), the Region 9 FOIA Officer will designate the Division that is likely to have the majority of the responsive records as the “Action Office” and will assign the other Division(s) as “Contributing Office(s)” in FOIAonline. The Action Office is responsible for coordinating the response letter, ensuring all records are uploaded into the system, and communicating with the requester about extensions. The Contributing Office(s) must coordinate the Agency’s response with the Action Office, including uploading responsive records into the system before the FOIA response is finalized and transmitted to the requester.

When a FOIA is actually assigned to ORC (not where ORC is only providing legal review of other Divisions’ records for releasability), the FOIA is transmitted to the ORC FOIA Coordinator in FOIAonline, who will then email it to the ORC managers to determine the appropriate Staff Attorney for assignment. FOIA assignments within ORC are determined by **ORC management** based on whether an **ORC Staff Attorney** is already assigned to the matter involved. If not, FOIA assignments are done by each Branch. In the Waste Branch, “random FOIAs” are assigned to the next person on a rotating list that is maintained by **Cora Tolentino**. In the ATWGL Branch, “random FOIAs” are distributed to the Staff Attorney with the most relevant subject matter expertise. Once the FOIA assignment is made, managers inform the **ORC FOIA Coordinator** to enter the names of the **ORC Staff Attorney** and **ORC Section Chief** into FOIAonline.

If the FOIA request is Multi-Divisional, ORC will either be designated the Action Office or a Contributing Office, and ORC must coordinate with the other Division(s) accordingly. Where ORC is the Action Office, ORC is responsible for preparing and signing the response letter, ensuring all records and forms are uploaded into the system, and communicating with the requester about extensions. Where ORC is a Contributing Office, the Staff Attorney must ensure that all of ORC’s responsive records and the Regional Counsel’s internal Records Release Authorization form are uploaded into FOIAonline.

All FOIA requests are managed through their lifecycle in FOIAonline, which provides for internal tracking and public viewing and searching of all agency responses. The Region 9 Senior Management Team receives status reports generated through FOIAonline to track FOIAs weekly on Mondays, including overdue responses. Therefore, it is important that all information concerning FOIA requests, including withdrawals, deadline extensions, scope changes, payment assurances, and response letters and records, are appropriately entered into the FOIAonline system no later than Friday of each week.

ORC roles and responsibilities for responding to FOIA requests are described below. Regional roles and responsibilities are described only insofar as they are relevant to the ORC FOIA Procedures. For other questions about FOIA and the response process, contact Steve Armsey (2-2919), Gretchen Busterud (2-3903), Sandy Leon (2-3878), or Bethany Dreyfus (2-3886).

## **II. Processing FOIA Requests**

1. **FOIA Assignment and Reporting:** Upon receipt of the FOIA request from the Region 9 FOIA Officer, the ORC FOIA Coordinator will:
  - a. send the FOIA request to the ORC managers for determining appropriate Staff Attorney assignment;
  - b. notify the Region 9 FOIA Officer if the request should be assigned to another Division in addition to ORC;
  - c. notify the Region 9 FOIA Officer if the request does not belong to ORC and should be reassigned to another Division;
  - d. notify the Region 9 FOIA Officer if another Division should be assigned the role of Action Office or Contributing Office;
  - e. track ORC FOIA deadlines and provide reminders to assigned Staff Attorneys and Section Chiefs of upcoming FOIA deadlines; and
  - f. provide ORC managers with a weekly status spreadsheet for active FOIAs, including FOIA tracking number, date received, date due, and assigned Staff Attorney.
  
2. **Fees and Fee Waivers:**
  - a. If a FOIA requester is seeking a fee waiver, the Region 9 FOIA Officer will notify the assigned Staff Attorney whether the fee waiver has been granted by Headquarters. Where a fee waiver has not been requested or has been denied, prepare a cost estimate for the search to be conducted and determine whether an assurance of payment is needed.
  - b. An assurance of payment should be obtained from the FOIA requester if fees are expected to exceed either \$25 or a higher amount specified in the request. Unless a waiver of fees has been granted by Headquarters, the Staff Attorney should estimate the processing fee which will be charged as specified in 40 C.F.R. §2.107. Search fees may apply even when no responsive records are identified or when no responsive records are disclosed to the requester.
  - c. Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. "Search" time includes the time needed to determine if records are responsive. "Review" time includes the time needed to determine if any records (or portions of records) are exempt from release. Fees are calculated as follows (see both charts):

Type of Staff*	Charge per Quarter Hour
Clerical Staff	\$4 per ¼ hour
Professional Staff	\$7 per ¼ hour
Managerial Staff	\$10.25 per ¼ hour

Type of Requester	Fee Category		
	Search	Review	Duplication
Commercial	YES*	Yes	Yes
Educational	No	No	YES* (100 pages free)
Non-commercial scientific	No	No	YES* (100 pages free)
News Media	No	No	YES* (100 pages free)
All Others	YES*(first 2 hours free)	No	Yes (100 pages free)

\* Note that entries with an asterisk cannot be charged if the Agency fails to comply with response deadlines.

Where assurance of payment is needed, use the Cost Worksheet to calculate estimated fees.<sup>1</sup> In appropriate cases, work with the requester to narrow the request before completing the Cost Worksheet. Send the Cost Worksheet to the Region 9 FOIA Officer (with a copy to the ORC FOIA Coordinator), who will send an assurance of payment letter to the requester through FOIAonline, which will toll the FOIA deadline until the requester submits a written assurance of payment. Once the written assurance of payment has been received, the Region 9 FOIA Officer will notify the ORC FOIA Coordinator and adjust the deadline in FOIAonline. If the requester fails to provide an assurance of payment within the required timeframe, the FOIA request will be closed out and a letter to that effect will be sent by the Region 9 FOIA Officer to the requester.

3. Deadlines and Extensions: The Staff Attorney will confirm the response deadline within the FOIAonline system with the ORC FOIA Coordinator and determine if the response can be completed by the deadline as follows:
  - a. Where a FOIA response can be completed within the 20 working-day deadline, proceed to completing response.
  - b. Where a FOIA response cannot be completed within the 20 working-day deadline, first determine if “unusual circumstances” apply. “Unusual circumstance” exist when (1) records from field or other locations separate from the office processing the request must be searched; (2) voluminous records must be searched, collected and examined; and (3) another agency or two or more components of EPA must be consulted on the request. If “unusual circumstances” exist, EPA may extend the due date as follows:

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<sup>1</sup> Region 9’s Cost Worksheet and other FOIA forms, templates and guidance can be found on 9Online at <http://intranet.epa.gov/9online/sites/foia>

- (i) If the response can be completed within a 10 working-day extension, notify the requester in writing that unusual circumstances exist and provide the new due date.
- (ii) If the response cannot be completed within a 10 working-day extension, provide the requester with the EPA FOIA Public Liaison contact information (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667) and an opportunity to either (a) modify the request so it can be processed within a 10 working-day extension, or (b) agree to an extension for processing the original or modified request.

- c. Where a FOIA response cannot be completed within the 20 working-day deadline and “unusual circumstances” do **not** exist, or if the due date has already been extended and additional time is needed to complete the response, negotiate an extension with the requester and provide the requester with the contact information for the EPA FOIA Public Liaison (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667), who will assist in resolving any disputes. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible.
- d. **In all cases involving an extension**, document in writing whether unusual circumstances exist, the requester’s agreement to an extension, or if there is no agreement, the new due date requested and the justification for the additional time necessary to complete the response, including the timeframes for providing phased responses of releasable records, leaving withholdings to the final response, and providing the EPA FOIA Public Liaison contact information, as appropriate. Provide all documentation regarding the FOIA deadline, extensions, and justifications for extensions and phased responses to the Region 9 FOIA Officer (with a copy to the ORC FOIA Coordinator) for entering into FOIAonline.
- e. For Multi-Division FOIA requests, the Action Office is responsible for coordinating any requests for extension of time. The Action Office must work closely with all of the Contributing Offices to ensure an adequate extension and that negotiated deadlines will be met.

4. Narrow Request where appropriate: Sometimes, requesters seek more records than they really want or need. In such situations, the ORC Staff Attorney should work with a requester to narrow the scope of a FOIA request. If a request is narrowed, written confirmation must be provided to the FOIA Coordinator to be entered into FOIAonline.

5. Record Search: Conduct a reasonable and adequate search to uncover all relevant records responsive to the FOIA request. Unless otherwise specified, searches must be conducted in both hard copies (including offsite records if appropriate) and electronic versions of records. For

FOIA requests requiring centralized email searches, detailed procedures will be provided in guidance posted on the 9online FOIA intranet page.

6. **Record Review**: Record review includes the following inquiries:

- a. Determine if gathered records are responsive to the request.
- b. Determine whether any responsive records are or may be Claimed CBI. If so, use the Initial Denial template letter and follow the CBI substantiation process (see FOIA Response 7.d. below).<sup>2</sup>
- c. Determine whether any responsive records, or portions of records, should be withheld pursuant to any FOIA exemption. If so, use the Partial or Full Denial template letter (see FOIA Response 7.e. or 7.f. below).
- d. **All records, whether being released or withheld, must be reviewed by at least two knowledgeable individuals, one of whom must be a manager or supervisor. The two individuals must sign an internal Records Review form, which will be uploaded into FOIAonline but will not be released to the public.**

7. **FOIA Response**: A complete FOIA response includes gathering all responsive records, reviewing the records for releasability, and preparing the appropriate FOIA response letter. **ORC Staff Attorneys** are responsible for providing to the **ORC FOIA Coordinator** four types of documentation which will be uploaded into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline (with substantiation); (3) Records Review forms; and (4) electronic versions of response letters and responsive ORC records. If responsive records are not in PDF format, the **ORC Staff Attorney** should work with the **ORC Administrative Staff** to convert them to PDFs (through scanning or otherwise). There are very limited exceptions to processing FOIA responses electronically through FOIAonline, and these exceptions must be approved by Headquarters. Template correspondence for each type of FOIA response is available on the 9online intranet page: <http://intranet.epa.gov/9online/sites/foia>

**Note**: There has been a change in the signature requirements for FOIA response letters. Every FOIA response must be signed by a Division Director, including full releases. For Multi-Division FOIAs, the Division Director for the Action Office signs the response letter and the Division Director(s) for the Contributing Office(s) must complete an internal Records Release Authorization form, which will be uploaded into the FOIAonline system, but will not be released to the public.

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<sup>2</sup> At this juncture, the Staff Attorney may try to negotiate with the FOIA requester to narrow the scope of the FOIA to exclude those documents that do or may have a claim of CBI. Also, the Staff Attorney may try to contact the document submitter informally to determine whether a claim of CBI will in fact be made.

- a. Full Release: Prepare a Full Release response letter for Regional Counsel's signature. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. Provide pdf versions of the response letter and records to the ORC FOIA Coordinator for delivery to the FOIA requester through FOIAonline. Provide to the ORC FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Provide the cost form to the ORC FOIA Coordinator for a bill to be prepared through the system.
- b. No records located: If no records are found, prepare a Certification of Search which describes the extent of the records search, and is signed by all employees that searched for records and a Section Chief. Prepare a "No Records" response letter with appeal rights for signature. Provide pdf versions of the "No Records" response and Certification of Search form to ORC FOIA Coordinator for uploading onto FOIAonline. **Note:** The Certification of Search form is never sent to the FOIA requester but will be maintained in the internal part of the FOIAonline system.
- c. Initial denial for CBI: Prepare an Initial Denial letter with appeal rights to the FOIA Requester for signature by the Regional Counsel. Provide a pdf version of the Initial Denial letter to the ORC FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the ORC FOIA Coordinator the Internal Records Review form signed by two individuals, at least one being a manager.

Using the OMB-approved substantiation template (available on the 9online FOIA page), send Request for Substantiation letter to the submitter of potential CBI. Inform submitter by telephone that substantiation letter has been mailed and to notify EPA if it is not received. The submitter has 15 days to substantiate the CBI claim. Following review of the substantiation provided and any Division comments, Staff Attorney prepares a CBI final determination using the Headquarter's template (located in the OGC Library in the Lotus Notes database) for the Regional Counsel's signature.

Provide a final response letter to the Requester following the expiration of the submitter's appeal period or resolution of any appeal.

- d. Partial Denial: If some of the records, or portions of records, responsive to the FOIA request are determined withholdable under one or more FOIA exemptions, prepare a Partial Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by the Regional Counsel. If a portion of a record is redacted, the exemption under which the redaction is made must be indicated on the record at the place of redaction. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. For the releasable records, collect them in electronic form where possible. Provide pdf versions of the Partial Denial, releasable records, and cost form to the ORC FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the ORC FOIA Coordinator the internal Records Review form signed by two individuals, at least one

- being a manager. **Note:** For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.
- e. Full Denial: Prepare a Full Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by the Regional Counsel. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. **Note:** In the case of a Full Denial issued to a commercial requester, fees should only be charged for extensive review where the requester has been informed that such expenses may be incurred even without records being produced. Provide pdf versions of the Full Denial letter and cost form to the ORC FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the ORC FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. **Note:** For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.
  - f. Phased Response: Where a large volume of records is requested, the Staff Attorney should discuss with the FOIA requester a phased approach for responding to the FOIA request. Only the final response should include information, where relevant, about withheld records, fee invoice information, and appeal rights. Each phased release should indicate how many phased releases have been made to date. Provide pdf versions of all correspondence and records for each phased response to the ORC FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the ORC FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager.
8. Limited Exceptions to Delivery through FOIAonline: The EPA Procedures require all FOIA requests to be managed throughout their lifecycle in FOIAonline. Approval for exceptions to delivering responses through FOIAonline may be obtained from Headquarters by emailing the Agency FOIA Officer, Larry Gottesman at Gottesman.Larry@epa.gov for responses (1) involving very large volumes of paper records where conversion to e-format is not practical; or (2) that are subject to special handling requirements or policies (e.g. records containing personally identifiable information). These exceptions are reviewed on a case-by-case basis by HQ. The decision approving the exception must be uploaded onto the internal portion of FOIAonline. Where an exception has been approved, a placeholder document with

contact information for obtaining a copy of the responsive records must be uploaded onto FOIAonline, and copies must be made readily available to future requesters.

9. Ensure all activity on FOIA requests, including deadline extensions and assurance of payment, are provided to the ORC FOIA Coordinator and that FOIAonline includes accurate and current information.
10. The ORC FOIA Coordinator uploads all communications concerning FOIA requests and responses into FOIAonline, including withdrawals, deadline extensions, scope changes, assurance of payments, internal records release forms, and pdf versions of response letters and releasable records.
11. The ORC FOIA Coordinator will work with the Region 9 FOIA Officer to close-out FOIA requests.



# Region 9 SFD Standard Operating Procedures for Responding to FOIA Requests

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## Summary

**Background.** The attached SOP describes in detail the procedures SFD will follow when FOIA requests are assigned to SFD for response. It incorporates the Procedures for Responding to FOIA Requests the Agency issued on September 30, 2014 ([http://www.epa.gov/irmpoli8/policies/CIO\\_2157-P-01.1.pdf](http://www.epa.gov/irmpoli8/policies/CIO_2157-P-01.1.pdf)). Below is a short summary of SFD's SOPs.

**Regional FOIA Distribution.** FOIA requests received by or assigned to the Region go through the **Region 9 FOIA Officer (IVRY JOHNSON)**, who manages [FOIAonline](#), a multi-agency electronic FOIA tracking system, and assigns the request to the Division that is most likely to house responsive records. The Region 9 FOIA Officer sends the request to the assigned Division's FOIA Coordinator with the deadline for responding to the request. Each division has its own internal assignment method; using that method, the Division FOIA Coordinator enters the staff and manager assignments into FOIAonline. If more than one Division has responsive records (a "Multi-Division FOIA"), the Region 9 FOIA Officer will assign the FOIA to the Division that is likely to have the majority of the responsive records as the "Action Office" and the other Division(s) as "Contributing Office(s)" in FOIAonline. The Action Office will be responsible for processing the request and preparing the response in coordination with the Contributing Office(s). The Contributing Office(s) must coordinate the Agency's response with the Action Office, including uploading responsive records into the system and notify the Action Office that their contribution is complete, before the FOIA response is finalized and transmitted to the requester. Divisions should contact the Region 9 FOIA Officer immediately if they have questions about the assignment of the "Action Office" and "Contributing Offices."

The Region 9 FOIA Officer coordinates Fee Waiver and Expedited Processing Requests with EPA Headquarters.

When a FOIA request is assigned to SFD, it is sent to **SFD's FOIA Coordinators (CHRISTINA CHENG and PETER TRAN)**, who then forward the request to appropriate staff and section chief to respond. FOIA assignments within SFD are determined by **SFD management** based on whether an **SFD Staff-person** is already assigned to the matter involved in the FOIA request. If not, FOIA assignments are done by each Branch. If a request has been erroneously assigned to SFD or should be assigned to another division, the SFD FOIA Coordinator will inform the Region 9 FOIA Officer immediately so that the request can be redirected to the appropriate Division for processing.

**FOIA Processing.** The assigned **SFD Staff-person** is responsible for ensuring that (1) an appropriate Assurance of Payment is obtained where necessary, (2) the statutory FOIA deadlines are met or an extension is obtained, (3) the appropriate supporting forms are prepared; and (4) the FOIA response is prepared for the Regional Counsel's signature. (**Note:** There has been a significant change in the review and signature requirements for FOIA response letters. Every FOIA response, including full releases of records, must be signed by a Division Director. For

Multi-Division FOIAs, Division Directors for the Contributing Office(s) must complete an internal Records Release Authorization form which will be uploaded into FOIAonline but not for release to the public. In addition, all records released or being withheld (in whole or in part) must be reviewed by at least two knowledgeable individuals, including one manager/supervisor and an attorney from ORC is involved for record review when any records will be withheld. Those that have reviewed the records must complete an internal Records Review form which will be uploaded into FOIAonline.) All of the template forms and letters can be found on the 9online FOIA intranet page at: <http://intranet.epa.gov/9online/sites/foia>

**\*Centralized Email Searches.** Searches for responsive email records are performed centrally. Searches for responsive records in Outlook are conducted by OEI's eDiscovery group and searches of Lotus Notes are conducted by Region 9's technical search lead. Procedures for requesting a centralized search will be set forth in guidance entitled "*Region 9 Centralized Searches Which Require a Search of Microsoft Outlook and Lotus Notes Emails*", and posted on the 9online FOIA intranet page.

**Uploading to FOIAonline.** SFD Staff are responsible for providing to the SFD FOIA Coordinators four types of information to be uploaded into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline; (3) Records Review forms and, where applicable, a Records Release Authorization form; and (4) electronic versions of response letters and responsive SFD records. The FOIA Coordinator is responsible for uploading records into FOIAonline. (Note: even where ORC is helping to conduct record review for releasability, the Division remains responsible for ensuring that all responsive records and FOIA-related information is uploaded into FOIAonline.)

**Regional FOIA Oversight.** Region 9's overdue FOIA responses are reported every Monday to the Region's Senior Management Team. Therefore, it is important that SFD Staff provide up-to-date information, including withdrawals, extensions, and responses, to the SFD FOIA Coordinator for timely input into the FOIAonline system **no later than noon on Friday** of each week.

## **SFD Procedures for Responding to FOIA Requests**

### **I. Overview**

FOIA requests received by or assigned to the Region go through the **Region 9 FOIA Officer (IVRY JOHNSON)**, who manages [FOIAonline](#) and assigns the request to the Division that is most likely to house the responsive records with a deadline for responding to the request. The Region 9 FOIA Officer then provides the request to the FOIA Coordinator for that Division.

If more than one Division has responsive records (a “Multi-Division FOIA”), the Region 9 FOIA Officer will designate the Division that is likely to have the majority of the responsive records as the “Action Office” and will assign the other Division(s) as “Contributing Office(s)” in FOIAonline. The Action Office is responsible for coordinating the response letter, ensuring all records are uploaded into the system, and communicating with the requester about extensions. The Contributing Office(s) must coordinate the Agency’s response with the Action Office, including uploading responsive records into the system before the FOIA response is finalized and transmitted to the requester.

When a FOIA is actually assigned to SFD, the FOIA is transmitted to the SFD FOIA Coordinator in email, who will then email it to the appropriate staff and Section Chief for assignment. Once the FOIA assignment is made, **SFD FOIA Coordinators** will enter the names of the **SFD Staff** and **SFD Section Chief** into FOIAonline.

If the FOIA request is Multi-Divisional, SFD will either be designated the Action Office or a Contributing Office, and SFD staff must coordinate with the other Division(s) accordingly. Where SFD is the Action Office, SFD is responsible for preparing and signing the response letter, ensuring all records and forms are uploaded into the system, and communicating with the requester about extensions. Where SFD is a Contributing Office, the staff must ensure that all of SFD’s responsive records and the internal Records Release Authorization form are uploaded into FOIAonline and is responsible for letting the Action Office know SFD contribution is complete.

All FOIA requests are managed through their lifecycle in FOIAonline, which provides for internal tracking and public viewing and searching of all agency responses. The Region 9 Senior Management Team receives status reports generated through FOIAonline to track FOIAs weekly on Mondays, including overdue responses. Therefore, it is important that all information concerning FOIA requests, including withdrawals, deadline extensions, scope changes, payment assurances, and response letters and records, are appropriately entered into the FOIAonline system no later than Friday of each week.

SFD roles and responsibilities for responding to FOIA requests are described below. Regional roles and responsibilities are described only insofar as they are relevant to the SFD FOIA Procedures. For other questions about FOIA and the response process, contact Ivry Johnson (7-4251), Christina Cheng (2-3017), or Peter Tran (2-3122).

### **II. Processing FOIA Requests**

1. FOIA Assignment and Reporting: Upon receipt of the FOIA request from the Region 9 FOIA Officer, the SFD FOIA Coordinator will:
  - a. send the FOIA request to the appropriate staff and Section Chief for response ;
  - b. notify the Region 9 FOIA Officer if the request should be assigned to another Division in addition to SFD;
  - c. notify the Region 9 FOIA Officer if the request does not belong to SFD and should be reassigned to another Division;
  - d. notify the Region 9 FOIA Officer if another Division should be assigned the role of Action Office or Coordinating Office;
  - e. track SFD FOIA deadlines and provide reminders to assigned staff and Section Chiefs of upcoming FOIA deadlines; and
  - f. provide SFD managers with a weekly status spreadsheet for active FOIAs, including FOIA tracking number, date received, date due, and assigned Staff Attorney.
  
2. Fees and Fee Waivers:
  - a. If a FOIA requester is seeking a fee waiver, the Region 9 FOIA Officer will notify the assigned staff whether the fee waiver has been granted by Headquarters. Where a fee waiver has not been requested or has been denied, prepare a cost estimate for the search to be conducted and determine whether an assurance of payment is needed.
  - b. An assurance of payment should be obtained from the FOIA requester if fees are expected to exceed either \$25 or a higher amount specified in the request. Unless a waiver of fees has been granted by Headquarters, the staff should estimate the processing fee which will be charged as specified in 40 C.F.R. §2.107. Note that attorney review time (which includes time spent redacting) should be included in any fee estimate for commercial requesters. Search fees may apply even when no responsive records are identified or when no responsive records are disclosed to the requester.
  - c. Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. "Search" time includes the time needed to determine if records are responsive. "Review" time includes the time needed to determine if any records (or portions of records) are exempt from release and attorney review time. Fees are calculated as follows (see both charts):

Type of Staff*	Charge per Quarter Hour
Clerical Staff	\$4 per ¼ hour
Professional Staff	\$7 per ¼ hour
Managerial Staff	\$10.25 per ¼ hour

Type of Requester	Fee Category		
	Search	Review	Duplication
Commercial	YES*	Yes	Yes
Educational	No	No	YES* (100 pages free)
Non-commercial scientific	No	No	YES* (100 pages free)
News Media	No	No	YES* (100 pages free)
All Others	YES*(first 2 hours free)	No	Yes (100 pages free)

\* Note that entries with an asterisk cannot be charged if the Agency fails to comply with response deadlines.

Where assurance of payment is needed, use the Cost Worksheet to calculate estimated fees.<sup>1</sup> In appropriate cases, work with the requester to narrow the request before completing the Cost Worksheet. Send the Cost Worksheet to the Region 9 FOIA Officer (with a copy to the SFD FOIA Coordinators), who will send an assurance of payment letter to the requester through FOIAonline, which will toll the FOIA deadline until the requester submits a written assurance of payment. Once the written assurance of payment has been received, the Region 9 FOIA Officer will notify the SFD FOIA Coordinators and adjust the deadline in FOIAonline. If the requester fails to provide an assurance of payment within the required timeframe, the FOIA request will be closed out and a letter to that effect will be sent by the Region 9 FOIA Officer to the requester.

3. Deadlines and Extensions: The staff will confirm the response deadline within the FOIAonline system with SFD FOIA Coordinators and determine if the response can be completed by the deadline as follows:
  - a. Where a FOIA response can be completed within the 20 working days deadline which includes attorney review time, proceed to completing response.
  - b. Where a FOIA response cannot be completed within the 20 working-day deadline, first determine if “unusual circumstances” apply. “Unusual circumstance” exist when (1) records from field or other locations separate from the office processing the request must be searched; (2) voluminous records must be searched, collected and examined; and (3) another agency or two or more components of EPA must be consulted on the request. If “unusual circumstances” exist, EPA may extend the due date as follows:
    - (i) If the response can be completed within a 10 working-day extension, notify the requester in writing that unusual circumstances exist and provide the new due date.

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<sup>1</sup> Region 9’s Cost Worksheet and other FOIA forms, templates and guidance can be found on 9Online at <http://intranet.epa.gov/9online/sites/foia>

(ii) If the response cannot be completed within a 10 working-day extension, provide the requester with the EPA FOIA Public Liaison contact information (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667) and an opportunity to either (a) modify the request so it can be processed within a 10 working-day extension, or (b) agree to an extension for processing the original or modified request.

- c. Where a FOIA response cannot be completed within the 20 working-day deadline and “unusual circumstances” do **not** exist, or if the due date has already been extended and additional time is needed to complete the response, negotiate an extension with the requester and provide the requester with the contact information for the EPA FOIA Public Liaison (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667), who will assist in resolving any disputes. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible.
- d. **In all cases involving an extension**, document in writing whether unusual circumstances exist, the requester’s agreement to an extension, or if there is no agreement, the new due date requested and the justification for the additional time necessary to complete the response, including the timeframes for providing phased responses of releasable records, leaving withholdings to the final response, and providing the EPA FOIA Public Liaison contact information, as appropriate. Provide all documentation regarding the FOIA deadline, extensions, and justifications for extensions and phased responses to the Region 9 FOIA Officer (with a copy to the SFD FOIA Coordinator) for entering into FOIAonline.
- e. For Multi-Division FOIA requests, the Action Office is responsible for coordinating any requests for extension of time. The Action Office must work closely with all of the Contributing Offices and ORC if records need to be reviewed for withholding to ensure an adequate extension and that negotiated deadlines will be met.

4. Narrow Request where appropriate: Sometimes, requesters seek more records than they really want or need. In such situations, the SFD staff should work with a requester to narrow the scope of a FOIA request. Staff should consult with an appropriate ORC attorney when necessary to assist with narrowing a search. If a request is narrowed, written confirmation must be provided to the FOIA Coordinator to be entered into FOIAonline.

5. Record Search: Conduct a reasonable and adequate search to uncover all relevant records responsive to the FOIA request. Unless otherwise specified, searches must be conducted in both hard copies (including offsite records if appropriate) and electronic versions of records.

- a. **Centralized Search**. Staff should contact ORC for development of centralized email searches or for advice regarding the adequacy of a search. For FOIA requests requiring

centralized email searches, detailed procedures will be provided in guidance posted on the 9online FOIA intranet page.

- b. ORC should be contacted for development of centralized email searches or for advice regarding the adequacy of a search.

— **Records Search.** Staff should coordinate with the Records Center ~~to. The Records Center Staff person should help to~~ generate all ~~available~~ responsive records ~~from the appropriate site file. Responsive records should be provided in pdf form to the Staffperson for placement onto the G:/SFREC/FOIA# drive for review. into an acceptable format for FOIA online and responders can view them when they become available.~~

e. ~~Staff person place all pdf FOIA responsive review documents from the Superfund Records Center onto the G:/SFREC/FOIA # Drive for review and hard copies should be remained with SFD Records Center.~~

6. **Record Review:** If any of the responsive records, or portions of records, may be subject to any FOIA exemption, provide those records to ORC for review. For any discretionary exemption (Exemptions 2, 5, 7(a), 8, and 9), along with the records, provide ORC the proposed exemption(s) and the basis for foreseeable harm if the record is released. Record review includes the following inquiries:

- a. Determine if gathered records are responsive to the request.
- b. Determine whether any responsive records are or may be Claimed CBI. If so, use the Initial Denial template letter and follow the CBI substantiation process (see FOIA Response 7.d. below).<sup>2</sup>
- c. Determine whether any responsive records, or portions of records, should be withheld pursuant to any FOIA exemption. If so, use the Partial or Full Denial template letter (see FOIA Response 7.e. or 7.f. below).
- d. All records, whether being released or withheld, must be reviewed by at least two knowledgeable individuals, one of whom must be a manager or supervisor. The two individuals must sign an internal Records Review form, which will be uploaded into FOIAonline but will not be released to the public.

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<sup>2</sup> At this juncture, the Staff Attorney may try to negotiate with the FOIA requester to narrow the scope of the FOIA to exclude those documents that do or may have a claim of CBI. Also, the Staff Attorney may try to contact the document submitter informally to determine whether a claim of CBI will in fact be made.



7. **FOIA Response:** A complete FOIA response includes gathering all responsive records, reviewing the records for releasability, and preparing the appropriate FOIA response letter. **SFD Staff** are responsible for providing to the **SFD FOIA Coordinators** four types of documentation which will be uploaded into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline (with substantiation); (3) Records Review forms; and (4) electronic versions of response letters and responsive SFD records. (**Note:** even where ORC is helping to conduct record review for releasability, the Division remains responsible for ensuring that all responsive records and FOIA-related information is uploaded into FOIAonline.) If responsive records are not in PDF format, the **SFD staff** should work with their Administrative Staff to convert them to PDFs (through scanning or otherwise). There are very limited exceptions to processing FOIA responses electronically through FOIAonline, and these exceptions must be approved by Headquarters. Template correspondence for each type of FOIA response is available on the 9online intranet page: <http://intranet.epa.gov/9online/sites/foia>

**Note:** There has been a change in the signature requirements for FOIA response letters. Every FOIA response must be signed by a Division Director, including full releases. For Multi-Division FOIAs, the Division Director for the Action Office signs the response letter and the Division Director(s) for the Contributing Office(s) must complete an internal Records Release Authorization form, which will be uploaded into the FOIAonline system, but will not be released to the public.

- a. **Full Release:** Prepare a Full Release response letter for SFD Director's signature. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. Provide pdf versions of the response letter and records to the SFD FOIA Coordinator for delivery to the FOIA requester through FOIAonline. Provide to the SFD FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Provide the cost form to the SFD FOIA Coordinator for a bill to be prepared through the system.
- b. **No records located:** If no records are found, prepare a Certification of Search which describes the extent of the records search, and is signed by all employees that searched for records and a Section Chief. Prepare a "No Records" response letter with appeal rights for signature. Provide pdf versions of the "No Records" response and Certification of Search form to SFD FOIA Coordinator for uploading onto FOIAonline. (**Note:** The Certification of Search form is never sent to the FOIA requester but will be maintained in the internal part of the FOIAonline system.)
- c. **Initial denial for CBI:** Prepare an Initial Denial letter with appeal rights to the FOIA Requester for signature by the SFD Director. Provide a pdf version of the Initial Denial letter to the SFD FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the SFD FOIA Coordinator the Internal Records Review form signed by two individuals, at least one being a manager.

Using the OMB-approved substantiation template (available on the 9online FOIA page), send Request for Substantiation letter to the submitter of potential CBI.



Inform submitter by telephone that substantiation letter has been mailed and to notify EPA if it is not received. The submitter has 15 days to substantiate the CBI claim. **Review the submitter's substantiation and provide the Division's comments on the substantiation to ORC.** Following review of the substantiation provided and any Division comments, SFD Staff prepares a CBI final determination using the Headquarter's template (located in the OGC Library in the Lotus Notes database) for the SFD Director's signature.

Provide a final response letter to the Requester following the expiration of the submitter's appeal period or resolution of any appeal.

- d. Partial Denial: If some of the records, or portions of records, responsive to the FOIA request are determined withholdable under one or more FOIA exemptions, prepare a Partial Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by SFD Director. If a portion of a record is redacted, the exemption under which the redaction is made must be indicated on the record at the place of redaction. **Review of Partial Denial letter and withheld records by ORC prior to signature by Division Director.** Where applicable, the response should indicate whether an invoice for fees will be forthcoming. For the releasable records, collect them in electronic form where possible. Provide pdf versions of the Partial Denial, releasable records, and cost form to the SFD FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the SFD FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. **Note:** For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.
- e. Full Denial: Prepare a Full Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by SFD Director **Review of Full Denial letter and withheld records by ORC prior to signature by Division Director.** Where applicable, the response should indicate whether an invoice for fees will be forthcoming. **Note:** In the case of a Full Denial issued to a commercial requester, fees should only be charged for extensive review where the requester has been informed that such expenses may be incurred even without records being produced. Provide pdf versions of the Full Denial letter and cost form to the SFD FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the SFD FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. **Note:** For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline.

- However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.
- f. Phased Response: Where a large volume of records is requested, the Staff-person should discuss with the FOIA requester a phased approach for responding to the FOIA request. Only the final response should include information, where relevant, about withheld records, fee invoice information, and appeal rights. Each phased release should indicate how many phased releases have been made to date. Provide pdf versions of all correspondence and records for each phased response to the SFD FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the SFD FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager.
  8. Limited Exceptions to Delivery through FOIAonline: The EPA Interim Procedures require all FOIA requests to be managed throughout their lifecycle in FOIAonline. Approval for exceptions to delivering responses through FOIAonline may be obtained from Headquarters by emailing the Agency FOIA Officer, Larry Gottesman at [Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov) for responses (1) involving very large volumes of paper records where conversion to e-format is not practical; or (2) that are subject to special handling requirements or policies (e.g. records containing personally identifiable information). These exceptions are reviewed on a case-by-case basis by HQ. The decision approving the exception must be uploaded onto the internal portion of FOIAonline. Where an exception has been approved, a placeholder document with contact information for obtaining a copy of the responsive records must be uploaded onto FOIAonline, and copies must be made readily available to future requesters.
  9. Ensure all activity on FOIA requests, including deadline extensions and assurance of payment, are provided to the SFD FOIA Coordinators and that FOIAonline includes accurate and current information.
  10. The SFD FOIA Coordinators uploads all communications concerning FOIA requests and responses into FOIAonline, including withdrawals, deadline extensions, scope changes, assurance of payments, internal records release forms, and pdf versions of response letters and releasable records.
  11. The SFD FOIA Coordinators will work with the Region 9 FOIA Officer to close-out FOIA requests.

## Region 9 Water Division Standard Operating Procedures for Responding to Freedom of Information Requests

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**Background:** This Standard Operating Procedure (SOP) describes in detail the procedures the Water Division (WTR) will follow when Freedom of Information Act (FOIA) requests are assigned to WTR for response. It incorporates the new Policy and Procedures for Responding to FOIA Requests the Agency issued on September 30, 2014

([http://www.epa.gov/irmpoli8/policies/CIO\\_2157-P-01.1.pdf](http://www.epa.gov/irmpoli8/policies/CIO_2157-P-01.1.pdf)).

All template forms and letters for FOIAs can be found on the 9online FOIA intranet page at:

<http://intranet.epa.gov/9online/sites/foia>

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## **SUMMARY OF CHANGES**

### **FOIA Distribution and Assignment:**

- **Assistant/Associate Director Notification:** WTR FOIA Coordinator will include the appropriate AD(s) when forwarding a FOIA request to the appropriate First Line Supervisor(s) for WTR Program Staff assignment.
  - **Division Reassignment:** If the WTR FOIA Coordinator sends a FOIA request that belongs to another division, the First Line Supervisor will notify the WTR FOIA Coordinator immediately and no later than 5 working days from receipt for reassignment.
    - If the First Line Supervisor notifies the WTR FOIA Coordinator after 5 working days, or the request is overdue, the First Line Supervisor is responsible for requesting an extension from the requestor.
  - **Action and Contributing Office:** For multi-division responses, the R9 FOIA Officer will assign the lead division to be the “Action Office” with other divisions acting as “Contributing Offices.”
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### **FOIA Procedures:**

- **Division Director Signature:** All FOIA responses must be signed by the Division Director. [Note: for multi-division FOIA responses, the Action Office Division Director will sign after Contributing Office Division Director(s) has signed an internal Release of Records Authorization form.]
  - **Email Searches:** Searches for responsive emails are performed centrally. Searches for responsive records in Outlook are conducted by OEI’s eDiscovery group and searches of Lotus Notes are conducted by Region 9’s technical search lead as described in Appendix B *Guidance for Email Searches for FOIA Requests*. Final procedures for requesting a centralized search will be set forth in guidance entitled “*Region 9 Centralized Searches Which Require a Search of Microsoft Outlook and Lotus Notes Emails*”, and posted on the 9online FOIA intranet page.
  - **Records Review:** All records, whether being released or withheld, must be reviewed by at least two knowledgeable individuals, one of whom must be a manager or supervisor. The two individuals must sign an internal Records Review form, which will be uploaded into FOIAonline but will not be released to the public.
  - **Records Upload and Release Publish Options for FOIAonline:** WTR Program Staff will include the appropriate “publish options” for responsive records when submitting to the WTR FOIA Coordinator to upload. WTR Program Staff will work with ORC to determine the appropriate publish options and exemption for records subject to ORC review. **Options include:** unredacted-unreleasable (UU), redacted-unreleasable (RU), unredacted-unreleasable to the general public (UR), redacted-releasable to the general public (RR), release to requester only (REQ).
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## **WTR PROCEDURES FOR RESPONDING TO FOIA REQUESTS**

### **I. Regional FOIA Distribution, Assignment and Monitoring**

The following is how FOIAs are assigned and logged into FOIAonline for WTR. When a FOIA request is received in Region 9, the **Region 9 FOIA Officer (Ivry Johnson)** will assign it to the appropriate division(s) with a deadline. If the FOIA request is assigned to WTR, it will be emailed to the WTR FOIA Coordinator (**Linda Moore with Uedico Scatliffe as backup**), with attachments and assigned due date.

If more than one division has responsive records (a “Multi-Division FOIA”), the **Region 9 FOIA Officer** will designate the division that is likely to have the majority of the responsive records as the “Action Office” and will assign the other division(s) as “Contributing Office(s)” in FOIAonline. The **Action Office** is responsible for coordinating the response letter, ensuring all records are uploaded into the system, and communicating with the requester about extensions. The **Contributing Office(s)** must coordinate the Agency’s response with the Action Office, including uploading responsive records into the system before the FOIA response is finalized and transmitted to the requester.

Upon receipt of the FOIA request from the Region 9 FOIA Officer, the **WTR FOIA Coordinator** will forward the request to the appropriate **First Line Supervisor(s)** and **Assistant/Associate Director(s) (AD(s))** for assignment to WTR Program Staff. The WTR Program FOIA Topics Table, Appendix A, can be used as a reference for office assignment.

If a request has been erroneously assigned to WTR, should be assigned to additional division(s), or if WTR has been erroneously assigned “Action” or “Contributing Office”, the **WTR FOIA Coordinator** will inform the Region 9 FOIA Officer immediately so that the request can be redirected and/or reassigned accordingly.

If the **WTR FOIA Coordinator** sends a FOIA request that belongs to another division to a First Line Supervisor, the **First Line Supervisor** will notify the WTR FOIA Coordinator immediately and no later than 5 working days from receipt for reassignment. If the First Line Supervisor notifies the WTR FOIA Coordinator after 5 working days, the First Line Supervisor will be responsible for requesting an extension from the requestor.

The **WTR FOIA Coordinator** will also track WTR FOIA deadlines and provide reminders to assigned WTR Program Staff and First Line Supervisors of upcoming FOIA deadlines; and provide WTR managers with a weekly status spreadsheet for active FOIAs, including FOIA tracking number, date received, date due, and assigned WTR Program Staff.

### **II. Processing and Responding to FOIA Requests**

WTR roles and responsibilities for processing and responding to FOIA requests are described below. **All roles and responsibilities described are specific to WTR only except where otherwise identified.** For questions about FOIA and the response process, contact Ivry Johnson (7-4251), or Linda Moore (2-3745).

As described in the processes below, the assigned **WTR Program Staff**, is responsible for ensuring that (1) an appropriate Assurance of Payment is obtained where necessary (in coordination with the Region 9 FOIA Officer and the WTR FOIA Coordinator), (2) the statutory FOIA deadlines are met or an extension is obtained, and (3) an appropriate records search is conducted, and (4) the appropriate supporting forms are prepared; and (5) the FOIA response is prepared for signature by the Division Director.

1. FOIAonline: All information responsive to a FOIA request must be entered into the FOIAonline system, which is both an internal system as well as a publicly viewable system in which requesters can track the progress of their requests and actually receive responsive documents through electronic uploading. FOIAonline also generates status reports for the Region 9 Senior Management Team to track FOIAs on a weekly basis, including overdue responses. Therefore, it is important that all information concerning FOIA requests, including withdrawals, deadline extensions, scope changes, payment assurances, and response letters and records, are appropriately entered into the FOIAonline system **no later than Friday of each week**.
2. Fees and Fee Waivers:
  - a. If a FOIA requester is seeking a fee waiver, the **Region 9 FOIA Officer** will notify the assigned WTR Program Staff whether the fee waiver has been granted by Headquarters. Where a fee waiver has not been requested or has been denied, **WTR Program Staff** will prepare a cost estimate for the search to be conducted and determine whether an assurance of payment is needed.
  - b. **WTR Program Staff** will work with the **WTR FOIA Coordinator** and **R9 FOIA Officer** to ensure an assurance of payment is obtained from the FOIA requester if fees are expected to exceed either \$25 or a higher amount specified in the request. Unless a waiver of fees has been granted by Headquarters, the **WTR Program Staff** should estimate the processing fee which will be charged as specified in 40 C.F.R. §2.107. Attorney review time (which includes time spent redacting) should be included in any fee estimate for commercial requesters. Search fees may apply even when no responsive records are identified or when no responsive records are disclosed to the requester.
  - c. Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. "Search" time includes the time needed to determine if records are responsive. "Review" time includes the time needed to determine if any records (or portions of records) are exempt from release. Fees are calculated as follows (see both charts):

Type of Staff*	Charge per Quarter Hour
Clerical Staff	\$4 per ¼ hour
Professional Staff	\$7 per ¼ hour
Managerial Staff	\$10.25 per ¼ hour

Type of Requester	Fee Category	
	Search Review	Duplication
Commercial	YES* Yes	Yes
Educational	No No	YES* (100 pages free)
Non-commercial scientific	No No	YES* (100 pages free)
News Media	No No	YES* (100 pages free)
All Others	YES*(first 2 hours free) No	Yes (100 pages free)

\* Note that entries with an asterisk cannot be charged if the Agency fails to comply with response deadlines.

Where assurance of payment is needed, use the Cost Worksheet to calculate estimated fees.<sup>1</sup> In appropriate cases, work with the requester to narrow the request before completing the Cost Worksheet. Send the Cost Worksheet to the Region 9 FOIA Officer (with a copy to the WTR FOIA Coordinator), who will send an assurance of payment letter to the requester through FOIAonline, which will toll<sup>2</sup> (pause) the FOIA deadline until the requester submits a written assurance of payment. Once the written assurance of payment has been received, the Region 9 FOIA Officer will notify the WTR FOIA Coordinator and adjust the deadline in FOIAonline. If the requester fails to provide an assurance of payment within the required timeframe, the FOIA request will be closed out and a letter to that effect will be sent by the Region 9 FOIA Officer to the requester.

3. **Deadlines and Extensions:** The assigned **WTR Program Staff** will evaluate the response deadline within the FOIAonline system with the **WTR FOIA Coordinator** and determine if the response can be completed by the deadline as described below. Where applicable, attorney review time should be considered in calculating response timing.
  - a. Where a FOIA response can be completed within the 20 working-day deadline, proceed to completing response.
  - b. Where a FOIA response cannot be completed within the 20 working-day deadline, first determine if “unusual circumstances” apply. “Unusual circumstance” exist when (1) records from field or other locations separate from the office processing the request must be searched; (2) voluminous records must be searched, collected and examined; and (3) another agency or two or more components of EPA must be consulted on the request. If “unusual circumstances” exist, EPA may extend the due date as follows:

<sup>1</sup> Region 9’s Cost Worksheet and other FOIA forms, templates and guidance can be found on 9Online at <http://intranet.epa.gov/9online/sites/foia>

- (i) If the response can be completed within a 10 working-day extension, notify the requester in writing that unusual circumstances exist and provide the new due date.
    - (ii) If the response cannot be completed within a 10 working-day extension, provide the requester with the EPA FOIA Public Liaison contact information (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667) and an opportunity to either (a) modify the request so it can be processed within a 10 working-day extension, or (b) agree to an extension for processing the original or modified request.
  - c. Where a FOIA response cannot be completed within the 20 working-day deadline and “unusual circumstances” do not exist, or if the due date has already been extended and additional time is needed to complete the response, negotiate an extension with the requester and provide the requester with the contact information for the EPA FOIA Public Liaison (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667), who will assist in resolving any disputes. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible.
  - d. In all cases involving an extension, document in writing whether unusual circumstances exist, the requester’s agreement to an extension, or if there is no agreement, the new due date requested and the justification for the additional time necessary to complete the response, including the timeframes for providing phased responses of releasable records, leaving withholdings to the final response, and providing the EPA FOIA Public Liaison contact information, as appropriate. Provide all documentation regarding the FOIA deadline, extensions, and justifications for extensions and phased responses to the Region 9 FOIA Officer (with a copy to the WTR FOIA Coordinator) for entering into FOIAonline.
  - e. For Multi-Division FOIA requests, the **Action Office** is responsible for coordinating any requests for extension of time. The Action Office must work closely with all of the Contributing Offices, and include ORC if records need to be reviewed for withholding, to ensure an adequate extension and that negotiated deadlines will be met. The **Contributing Office(s)** should notify the Action Office if they think an extension is needed.
4. Narrow Request where appropriate: Sometimes, requesters seek more records than they really want or need. In such situations, the assigned **WTR Program Staff** should work with a requester to narrow the scope of a FOIA request and consult with an appropriate ORC attorney when necessary to assist with narrowing a search. If a request is narrowed, written confirmation must be provided to the WTR FOIA Coordinator to be entered into FOIAonline. The **Action Office** will coordinate with the **Contributing Office(s)** to determine whether the request should be narrowed.



5. Record Search: Assigned **WTR Program Staff** will conduct a reasonable and adequate search to uncover all relevant records responsive to the FOIA request. In the case of a Multi-Division FOIA, each division will conduct their own records search. Unless otherwise specified, searches must be conducted in both hard copies (including offsite records if appropriate) and electronic versions of records. Searches for responsive email records are performed centrally. Searches for responsive records in Outlook are conducted by OEI's eDiscovery group and searches of Lotus Notes are conducted by Region 9's technical search lead as described in Appendix B *Guidance for Email Searches for FOIA Requests*. Final procedures for requesting a centralized search will be set forth in guidance entitled "*Region 9 Centralized Searches Which Require a Search of Microsoft Outlook and Lotus Notes Emails*", and posted on the 9online FOIA intranet page. ORC should be contacted for development of centralized email searches or for advice regarding the adequacy of a search.
6. Record Review: If any of the responsive records, or portions of records, may be subject to any FOIA exemption, assigned **WTR Program Staff** will provide those records to ORC for review. For any discretionary exemption (Exemptions 2, 5, 7(a), 8, and 9), along with the records, provide ORC the proposed exemption(s) and the basis for foreseeable harm if the record is released. Record review includes the following inquiries:
  - a. Determine if gathered records are responsive to the request.
  - b. Determine whether any responsive records are or may be Claimed CBI. If so, use the Initial Denial template letter and follow the CBI substantiation process (see FOIA Response 7.d. below).<sup>3</sup>
  - c. Determine whether any responsive records, or portions of records, should be withheld pursuant to any FOIA exemption. If so, use the Partial or Full Denial template letter (see FOIA Response 7.e. or 7.f. below).
  - d. **All records, whether being released or withheld, must be reviewed by at least two knowledgeable individuals, one of whom must be a manager or supervisor. The two individuals must sign an internal Records Review form, which will be uploaded into FOIAonline but will not be released to the public.**
7. FOIA Response: A complete FOIA response includes gathering all responsive records, reviewing the records for releasability, and preparing the appropriate FOIA response letter. Assigned **WTR Program Staff** are responsible for providing to the WTR FOIA Coordinator four types of documentation which will be uploaded into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline (with substantiation); (3) Records Review forms; and (4) electronic versions of response letters and responsive WTR records. [Note: Even where ORC is helping to conduct record review for releasability, the division remains responsible for ensuring that all responsive records and FOIA-related information is uploaded into FOIAonline.] If responsive records are not in PDF format, the

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<sup>3</sup> At this juncture, the Staff Attorney may try to negotiate with the FOIA requester to narrow the scope of the FOIA to exclude those documents that do or may have a claim of CBI. Also, the Staff Attorney may try to contact the document submitter informally to determine whether a claim of CBI will in fact be made.

**WTR Program Staff** should work with the **WTR Administrative Staff** to convert them to PDFs (through scanning or otherwise). There are very limited exceptions to processing FOIA responses electronically through FOIAonline, and these exceptions must be approved by Headquarters. Template correspondence for each type of FOIA response is available on the 9online intranet page: <http://intranet.epa.gov/9online/sites/foia>

**Note: There has been a change in the signature requirements for FOIA response letters. Every FOIA response must be signed by a Division Director, including full releases. For Multi-Division FOIAs, the Action Office Division Director will sign the response letter after a completed internal Records Release Authorization form has been signed by the Contributing Office Division Director(s), which will be uploaded into the FOIAonline system, but will not be released to the public.**

- a. Full Release: Prepare a Full Release response letter for WTR Division Director's signature. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. Provide PDF versions of the response letter and records to the WTR FOIA Coordinator for delivery to the FOIA requester through FOIAonline. Provide to the WTR FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Provide the cost form to the WTR FOIA Coordinator for a bill to be prepared through the system.
- b. No records located: If no records are found, prepare a Certification of Search which describes the extent of the records search, and is signed by all employees that searched for records and a First Line Manager. Prepare a "No Records" response letter with appeal rights for signature. Provide PDF versions of the "No Records" response and Certification of Search form to WTR FOIA Coordinator for uploading onto FOIAonline. [**Note:** The Certification of Search form is never sent to the FOIA requester but will be maintained in the internal part of the FOIAonline system.]
- c. Initial denial for CBI: Prepare an Initial Denial letter with appeal rights to the FOIA Requester for signature by the WTR Division Director. Provide a PDF version of the Initial Denial letter to the WTR FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the WTR FOIA Coordinator the Internal Records Review form signed by two individuals, at least one being a manager.

Using the OMB-approved substantiation template (available on the 9online FOIA page), send Request for Substantiation letter to the submitter of potential CBI. Inform submitter by telephone that substantiation letter has been mailed and to notify EPA if it is not received. Upon receipt of the substantiation letter, the submitter has 15 days to substantiate the CBI claim. Review the submitter's substantiation and provide the division's comments on the substantiation to ORC. Following review of the substantiation provided and any division comments, assigned WTR Program Staff prepares a CBI final determination using the Headquarter's template (located in the OGC Library in the Lotus Notes database) for the WTR Division Director's signature.

Provide a final response letter to the Requester following the expiration of the submitter's appeal period or resolution of any appeal.

- d. Partial Denial: If some of the records, or portions of records, responsive to the FOIA request are determined withholdable under one or more FOIA exemptions, prepare a Partial Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by the WTR Division Director. If a portion of a record is redacted, the exemption under which the redaction is made must be indicated on the record at the place of redaction. Assigned WTR Program Staff will include review of Partial Denial letter and withheld records by ORC prior to signature by WTR Division Director. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. For the releasable records, collect them in electronic form where possible. Provide PDF versions of the Partial Denial, releasable records, and cost form to the WTR FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the WTR FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. **[Note:** For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.]
- e. Full Denial: Prepare a Full Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by the WTR Division Director. Assigned WTR Program Staff will include review of Full Denial letter and withheld records by ORC prior to signature by the WTR Division Director. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. **[Note:** In the case of a Full Denial issued to a commercial requester, fees should only be charged for extensive review where the requester has been informed that such expenses may be incurred even without records being produced.] Provide PDF versions of the Full Denial letter and cost form to the WTR FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the WTR FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. **[Note:** For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.]
- f. Phased Response: Where a large volume of records is requested, the assigned WTR WTR Program Staff should discuss with the FOIA requester a phased approach for responding to the FOIA request. Only the final response should include information, where relevant, about withheld records, fee invoice information, and appeal rights. Each phased release should indicate how many phased releases have been made to date. Provide PDF versions of all correspondence and records for each phased response to the WTR FOIA Coordinator for delivery to the FOIA requester through the FOIAonline

system. Provide to WTR FOIA Coordinator internal Records Review form signed by two individuals, at least one being a manager.

8. Limited Exceptions to Delivery through FOIAonline: EPA procedures require all FOIA requests to be managed throughout their lifecycle in FOIAonline. Approval for exceptions to delivering responses through FOIAonline may be obtained from Headquarters by emailing the Agency FOIA Officer, Larry Gottesman at [Gottesman.Larry@epa.gov](mailto:Gottesman.Larry@epa.gov) for responses (1) involving very large volumes of paper records where conversion to e-format is not practical; or (2) that are subject to special handling requirements or policies (e.g. records containing personally identifiable information). These exceptions are reviewed on a case-by-case basis by HQ. The decision approving the exception must be uploaded onto the internal portion of FOIAonline. Where an exception has been approved, a placeholder document with contact information for obtaining a copy of the responsive records must be uploaded onto FOIAonline, and copies must be made readily available to future requesters.
9. FOIA Online Uploads: The **WTR FOIA Coordinator** uploads all communications concerning FOIA requests and responses into FOIAonline, including withdrawals, deadline extensions, scope changes, assurance of payments, internal records release forms, and PDF versions of response letters and releasable records. **WTR Program Staff will include the appropriate “publish options” for responsive records when submitting to the WTR FOIA Coordinator to upload. WTR Program Staff will work with ORC to determine the appropriate publish options and exemption for records subject to ORC review. Options include: unredacted-unreleasable (UU), redacted-unreleasable (RU), unredacted-unreleasable to the general public (UR), redacted-releasable to the general public (RR), release to requester only (REQ).**
10. FOIA Close-Out: The **WTR FOIA Coordinator** will work with the **Region 9 FOIA Officer** to close-out FOIA requests.

**Appendix A. WTR Programs FOIA Topics**

WTR-1-2 Sustainability and Climate Change	WaterSense, water use efficiency, water loss control audits, sustainable water infrastructure, SF Bay-Delta, drought strategy, Green Infrastructure, climate change adaptation
WTR-2-1 Water Quality Assessment	TMDLs, water quality standards, toxicity, monitoring & assessment, impaired waters, BEACH, CA Toxics Rule
WTR-2-2 Watersheds	Nonpoint Source (CWA 319), marine debris, TMDL implementation, National Estuary Program (CWA 320), watersheds planning
WTR-2-3 NPDES Permits	NPDES permits; wastewater, industrial and stormwater discharges; sludge/biosolids; pre-treatment; CAFO, vessel discharges [Note: spill tips/questions go to ENF]
WTR-2-4 Wetlands	CWA 404 and tribal 401 permits, WOUS Rule, jurisdiction, MPRSA, dredging, ocean disposal, compensatory mitigation
WTR-3-1 Drinking Water Management	SDWA, drinking water, small community DW systems, aircraft drinking water
WTR-3-2 Drinking Water Protection	underground injection, groundwater, tribal drinking water, sole source aquifers, aquifer exemptions
WTR-3-3 Infrastructure	CWSRF, DWSRF, US/Mexico Border, drinking water and wastewater infrastructure, Pacific Islands
WTR-3-4 Tribal Water	tribal grants, tribal technical assistance, tribal water quality protection, tribal wastewater infrastructure, tribal water quality standards

## **Appendix B. Guidance for Email Searches for FOIA Requests:**

Note: This Guidance will be replaced by the *Region 9 Centralized Searches Which Require a Search of Microsoft Outlook and Lotus Notes Email*, once finalized and posted on the R9 Online FOIA intranet page.

Key steps in the process:

- The Action Office will coordinate with ORC and other assigned divisions to determine whether an email search is required.
- If so, the names of potential email custodians are gathered and key search terms are identified.
- The lead responder in the Action Office fills out an [Email Search Request Form](#) (which includes the following criteria) and submits it to the FOIA Officer at [r9foia@epa.gov](mailto:r9foia@epa.gov).
- The FOIA Officer submits the form via SharePoint site to OEI (for Outlook searches) and to the Region 9 technical search lead (for Lotus Notes searches of email sent before March 2013).

### **Email Search Criteria**

- a. **Title of Search** – “Request by ABC Power Utilities for EPA Climate Reports”
- b. **Type of Search (for litigation, congressional responses, or FOIA)** – “FOIA”
- c. **Search Keywords** – (Be as specific as possible to reduce extraneous results) “ (“Navajo Generating Station” OR NGS) AND [doi.gov](http://doi.gov)”
- d. **Applicable date range of search** – “January 1, 2014 – May 31, 2014”
- e. **Names and Email Addresses of Custodians** – “1) Jed Smith, [smith.jed@epa.gov](mailto:smith.jed@epa.gov); 2) Abigail Xi, [xi.abigail@epa.gov](mailto:xi.abigail@epa.gov); 3) Elaine Pond, [pond.elaine@epa.gov](mailto:pond.elaine@epa.gov)”
- f. **Lead Search POC and Contact Information** (e.g., the primary Subject Matter Expert and FOIA Program Contact and phone number/email address) – “Jane Doe, SME, 415-972-0000, [doe.jane@epa.gov](mailto:doe.jane@epa.gov); Ivry Johnson, R9 FOIA Officer, 415-947-4251, [johnson.ivry@epa.gov](mailto:johnson.ivry@epa.gov)”
- g. **Office or Region making request** – “Region 9”
- h. **Estimated number of documents** – “We anticipate collecting about 5,000 emails from 7 custodians.”
- i. **Response Date** – “We need the search to be completed within 4 working days. We need to provide an initial response by August 30, 2014. “
- j. **Other Relevant Information** – Add notes or “N/A”

### **Processing Outlook Search Results**

- Search results are returned to FOIA Officer and Lead Custodian/Search POC in the form of PST files from OEI eDiscovery.
- FOIA Officer transfers PST files to P: drive, establishes access for all custodians, and notifies Lead Custodian.
- Lead Custodian coordinates review of search results by each custodian, who opens his/her PST file in Outlook, creates PDF files of each responsive document, and deposits them into an assigned folder in the P: drive. ([Detailed guidance](#) is available on [9online’s FOIA page](#).)
- Lead Custodian and ORC coordinate on final review of responsive email documents and work with Action Office’s FOIA Coordinator to upload documents to FOIAOnline.

### **Processing Lotus Notes Search Results**

- Technical Search Lead is contacted by the R9 FOIA Officer and performs search on Lotus Notes mailboxes (and archives as appropriate) of all custodians listed on the FOIA Search Request Form and deposits results in a folder in each individual's Lotus Notes mailbox.
- Technical Search Lead notifies the custodians that their search results are ready for review and coordinates with database manager to create a SHARK collection database.
- Custodians review search results and copy responsive emails into the SHARK database.
- (Detailed guidance on this will be available shortly.)
- When all custodians have completed review and copied their responsive emails, Lead Custodian requests that database manager run agent to remove duplicates from SHARK database.
- Lead Custodian and ORC coordinate on final review of responsive email documents and work with Action Office's FOIA Coordinator to create PDF versions and upload them to FOIAOnline.